

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2052

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RICHARD LABELLE,

Appellant,

v.

HENDERSON, Superintendent,

Appellee.

No. 77-2052

EXTRACTS FROM STATE COURT PROCEEDINGS

PS



PAGINATION AS IN ORIGINAL COPY

RICHARD LaBELLE,
Appellant,
v.
HENDERSON, Superintendent,
Appellee.

EXTRACTS FROM STATE COURT PROCEEDINGS

EXTRACTS FROM EXHIBITS

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INTRODUCTION

Petitioners state court proceedings consist of:

First trial transcript - 3 volumes - 1908 pages
Exhibits - first trial - 1 volume - 63 pages
Appellate Division Brief (appellant-from first trial) 76 pages
Appellate Division Brief (respondent) not in petitioner's possession
Court of Appeals Brief (appellant) 82 pages
Court of Appeals Brief (respondent) not in petitioner's possession
Second trial transcript - 2 volumes - 806 pages
Exhibits - 1 volume - 44 pages
Appellate Division Brief (appellant) - 30 pages
Appellate Division Brief (respondent) - 22 pages

Petitioner has attempted to extract all the material relevant to the Stone v. Powell issue before the court. The transcripts, exhibits and briefs will be sent to the court upon request. Petitioner's attorney is attempting to have the transcripts rebound at this time.

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

EDWARD F. LABELLE,
Defendant,

and

RICHARD M. LABELLE,
Defendant-Appellant.

Indictment No. C-1886.

RECORD ON APPEAL.

Volume I--Pages 1 to 648.

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Joseph Robert Garrett, Jr., for People, Cross

Q. What day did you commence your duties as an investigator assigned to the Rosemary Snay homicide or alleged homicide?

Mr. Russell: Now I object to this question again, Your Honor. It is too broad in scope. It is covering material to be covered at the trial. If this is a pre-trial hearing limited to voluntariness, I claim that's what it should be. Otherwise we should have started the trial and got a jury, so I object to this. We could be here for two weeks if he is going to be allowed to do this, Your Honor.

Judge Knight: Overruled.

Mr. Russell: Exception.

Judge Knight: The witness, however, has said he didn't remember the date. I think you asked him to get the information; he said he would.

The Witness: That's correct, sir.

Q. Is it a fact—and we can stop this—is it a fact that you do not remember the exact date when you commenced your investigation of this matter that we have been discussing? A. That's correct.

Q. All right, but it was before Monday, December 3rd, was it not? A. Yes, sir. Tuesday. It was Tuesday.

Mr. Russell: Now, Your Honor, that's another misstatement. I don't think Monday was December 3rd.

The Witness: It was a Tuesday.

Q. What date was Monday on, the Monday that you do have an express distinct recollection is concerned? What date was that? A. Monday was the 2nd and Tuesday was the 3rd.

Q. Do you have any recollection as to anything you did on the 1st with respect to this case? A. On the 1st? Routine investigation.

Joseph Robert Garrett, Jr., for People, Cross

Q. What does that mean? What did you do?

Mr. Russell: I object to this, Your Honor, as to what he did on December 1st. It has nothing to do with this proceeding.

Judge Knight: Mr. O'Connor, I think you are going far afield. I sustain that.

Mr. O'Connor: I respectfully except.

Q. Was the warrant for assault third, which either you or Mr. Bardossi had in your possession on the morning of December 3rd, 1963, a warrant for the arrest of Richard LaBelle which had been issued as a result of a signed information being filed with some magistrate?

A. Yes, sir.

Q. Who signed the information? A. That I couldn't—I don't have any—I don't recall.

Q. Were you there when it was signed? A. No, I wasn't.

Q. Do you know what Judge it was sworn to before?

A. I believe it was Judge Daly here in the City of Troy.

Q. Do you know what the accusation was? A. I know it was for assault third.

Q. So do I, from what you have testified—do you know whom it was alleged in either the information or the warrant that Richard LaBelle assaulted? A. No, I don't. I merely accompanied Senior Investigator Bardossi.

Q. Do you know where that information presently is? A. No, I don't.

Q. Do you know where the warrant presently is? A. No, I don't.

Q. Was Richard M. LaBelle ever arraigned on that charge? A. Was he ever arraigned on the charge of assault? No, he wasn't.

Q. However, there is no question but what he was arrested by you and Mr. Bardossi on a charge of assault third? A. Yes, sir.

Joseph Robert Garrett, Jr., for People, Cross

Q. Is that the only day that you interrogated Richard LaBelle or investigated this alleged crime? A. No.

Q. What other days? A. The days previous, a few days previous to December 3rd.

Q. And what days were they?

Mr. Russell: Now again Your Honor, I enter my previous objection that we are getting too far afield and that isn't the issue at this proceeding.

Judge Knight: I will let him answer what days they were, but I am not going to go into what he did on those days.

A. I would say two or three days previous to the arrest of Richard.

Q. And at that time, those two previous days, did you know the location where the body of Rosemary Snay had been discovered? A. Did I know the location?

Q. Yes. A. No, I didn't know the precise location, no.

Q. Now, how did you and Mr. Bardossi gain entrance to the Richard LaBelle premises at the time that—just prior to your arrest of Richard LaBelle? A. How did we gain entrance?

Q. Yes. A. We went in the back door. There is an enclosure there, like a shed type. We went downstairs and knocked on the door.

Q. You didn't ring the bell? A. We didn't notice any bell.

Q. You banged at the door, did you? A. Knocked at the door, yes.

Q. Both of you? A. That's correct.

Q. And how long was it before someone came to the door? A. Just a minute.

Q. And during that time were both of you banging on the door? A. No, I don't believe so; no, just knocked on the door.

Joseph Robert Garrett, Jr., for People, Re-cross

Q. Do you know what happened to the warrant in connection with the charge of assault in the third degree? A. No, sir.

Q. I don't believe we found out this morning the name of the victim of the assault third degree warrant.

Mr. Russell: I object to that, Your Honor; improper in form and irrelevant to the issues here.

Judge Knight: I doubt if he's finished his question.

Mr. Burke: I finished, Your Honor.

Judge Knight: There was no question at all, was there?

Mr. Russell: I objected to it as improper and irrelevant as to the issues here.

Q. Could you tell us the name of the victim or the alleged victim of that assault third degree charge that you referred to this morning?

Mr. Russell: I object to it, Your Honor, as having nothing to do with the issue.

Judge Knight: Sustained. We've gone all over that. I won't permit any further examination on that subject.

Mr. Burke: You feel that we found that out this morning, Your Honor?

Judge Knight: Well, if you haven't, you could find it out from proper records.

Mr. Burke: I just don't recall that having been answered.

Judge Knight: I don't see that it's pertinent here at all.

Mr. Burke: That's all.

Mr. Russell: That's all, Your Honor.

Mr. O'Connor: Before he leaves the stand, may I renew my request under People against Rosario for a transcript of the witness's testimony before

Joseph Robert Garrett, Jr., for People, Re-cross

the Grand Jury, unless we have an understanding that the witness will be available if it is determined by the Court that I may.

Judge Knight: I will rule on it now, Mr. O'Connor. I am going to deny your motion for the entire testimony of this witness before the Grand Jury. I have read it. There are about five questions on the first page that have anything at all to do with this matter that we are concerned with now, and I will let you have a copy of that page if you like. On the trial, if this witness is called, I will see that you have the entire testimony that this witness gave before the Grand Jury.

Mr. O'Connor: I respectfully except to Your Honor's refusal to furnish me with the transcript presently for purposes of cross examination.

Judge Knight: Do you wish this page?

Mr. O'Connor: I except to your refusal to furnish the entire transcript and I will accept the portion that you have furnished me.

Judge Knight: It is way beyond the issues here.

(Judge Knight hands the page to Mr. O'Connor.)

Mr. O'Connor: May I have a moment?

Mr. Russell: May I ask a couple questions, Your Honor, or is it Mr. O'Connor's turn?

Judge Knight: Wait until they finish reading that page.

By Mr. O'Connor:

Q. Mr. Garrett, you did testify before a Rensselaer County Grand Jury at the time it was investigating the alleged homicidal killing of Rosemary Snay, did you not?

A. That's right.

Q. Do you recall what date it was that you testified? A. I don't recall at the present time.

Frank T. Turner, for Defendants, Direct

Q. And have you produced in pursuance to the mandate of such subpoenas such information? A. Yes.

Mr. Cholakis: At this time I would object to any testimony about informations which precede the time that the defendants were taken into custody.

The Court: What is your objection?

Mr. Cholakis: As I understand the hearing here is to determine the voluntariness of the statement given by Richard LaBelle. I object to any testimony or any information which precedes the time that the defendant Richard LaBelle was taken into custody by New York State Police Officers.

Mr. O'Connor: May I state—

The Court: Yes.

Mr. O'Connor: My position. Our position is, Judge, that if the original arrest under the warrant charging the defendant LaBelle, with assault third on the early morning hours, in the early part of December 3rd, was tainted with any type of illegality, be it jurisdictional or otherwise, that taint will run to the voluntariness, of the confession, because if the defendant was detained illegally, obviously, and as a matter of pure logic, anything obtained from him during the period of the illegal detention would be illegal and without warrant in law.

The Court: I will permit you to show that a warrant was issued by the Police Justice of the City of Troy, but to go into the details of what preceded the warrant, we are not concerned with that here.

Mr. O'Connor: I respectfully except.

The Court: You may show the warrant was issued and when it was issued.

Leo P. Barry, for Defendants, Direct

Q. Did there come a time—withd. law that. Did you as a person in law enforcing, the Police officer who procured the warrant, execute it? A. No, sir.

Q. Did you after it was executed ever interrogate Richard LaBelle? A. No, sir.

Q. Did you after it was executed ever see him? A. Yes, sir.

Q. Where and at what time and on what day? A. On 10:40 or 10:50 in the East Greenbush barracks on the 3rd of December.

Q. Would that be in the morning, Leo, or evening? A. In the morning.

Q. Did you talk with him at all? A. No, sir.

Q. Did you remain there throughout the day? A. Yes, sir.

Q. Did you participate at all in the preliminaries which led to the administering the lie detector test? A. No, sir.

Q. Did you know that one was administered? A. Yes, sir.

Q. Were you present when Richard was arraigned? A. Yes, sir.

Q. Were you present within the Substation at all times from 10 o'clock or so in the morning until he was arraigned? A. Yes, sir.

Q. There was never to your knowledge an arraignment on the charge that you had prepared at the request of Mr. Brandon, was there? A. That's right, no, never any.

Q. How long a period of time was there a detention in the East Greenbush barracks on the warrant which you procured as an informant at the request of Inspector Brandon until the arraignment on the entirely different charge of murder in the first degree? A. From 10:50 a.m. on December 2nd until 4:20 a.m. on December 4th.

Q. For the purposes of the record will you state how many hours that was? A. Approximately 17, 18 hours.

Q. You did see Richard on December 3rd? A. Yes, sir.

Leo P. Barry, for Defendants, Direct

Q. What was the color of his hair on that day? A. It was dark.

Q. Did you see Edward on that day? A. Yes, sir.

Q. What was the color of his hair on that day? A. I didn't notice, Judge.

Q. What is the color of his hair now? A. I imagine he has got it dressed up, dyed black.

Q. Is it your testimony that that boy's hair is presently dyed black? A. It looks that way from a distance.

Mr. Cholakis: I object to it as incompetent, irrelevant and immaterial, your Honor.

The Court: Sustained.

Mr. O'Connor: That's all.

Direct Examination by Mr. Burke:

Q. Mr. Barry, from the time that you saw Edward LaBelle, who sits over here, in the East Greenbush barracks, where has he been up until today?

Mr. Cholakis: Who did you say, Edward LaBelle? I object.

Mr. Burke: He said Edward LaBelle's hair is dyed.

The Court: Let's not get into the color of the hair.

Mr. Burke: I think it's very important.

The Court: Important for what reason?

Mr. O'Connor: I will approach the Bench and show you why, with your Honor's permission.

The Court: You can all come up here and tell me why it's important as to the color of the defendant's hair in this proceeding.

(Discussion off the record at the Bench between all counsel and the Court.)

The Court: Proceed, Mr. Burke.

Richard Joseph Smith, for People, Direct

Q. Now, what was this conversation you had? A. Well—

Mr. O'Connor: Just a minute. If you are going to—if you are seeking to elicit a conversation which was not had in the presence of the defendants, I object to the conversation.

Mr. Russell: No, I am not. I am trying to elicit—

Mr. O'Connor: If you are, I am going to object as hearsay.

Mr. Russell: No.

Judge Knight: Have him indicate who the conversation was with first.

Q. Do you know with whom you had the conversation?

A. Yes, sir.

Q. Who was it? A. Eddie LaBelle.

Q. And what did you say to him, what did he say to you, or what was said in your presence? A. Well, I asked him what happened and I told him I was going to turn him in to the police, and he said, "Go right ahead," and then he pulled away.

Q. And they pulled away? A. Yes, sir.

Q. Who was driving this car that you described? A. Eddie LaBelle.

Q. Are you able to state about what time of night this was now? A. About 7:00, 7:30.

Q. Had you ever known Edward LaBelle prior to this occasion? A. Yes, sir, I've met him a couple times.

Q. And how long prior to this occasion on November 28th had you first met him, in days or months or years? A. Oh, about three months.

Q. And after they drove off, what did you do? Where did you people go? A. Well, we took Mary home.

Q. Are you able to recollect the license plate of that car, the one you pulled up alongside? A. Yes, sir.

Q. What was it? A. MT-9451.

Richard Joseph Smith, for People, Cross

Q. Where did you first meet Edward La Belle? A. At the reservoir.

Q. At the swimming three months before that? A. When we went up there, yes, sir.

Q. When was that? A. I seen him a couple of times up there about a year ago.

Q. No. When did you first meet Edward LaBelle? A. About three years ago.

Q. And where was that? A. At the reservoir.

Q. At what time of the year? A. In the summer.

Q. Where is that reservoir located? A. It's right on Oil Mill Hill, the first one.

Q. How about Richard? A. I never seen him before.

Q. You never met him before? A. No, sir, except for the night in the car.

Q. Where else did you see Edward LaBelle other than three years ago at the reservoir? A. I seen him a couple of times downtown.

Q. And when you met him three years ago swimming, did you say that you were in the same group? A. Yes, sir.

Q. And you had met him, right? A. Yes, sir.

Q. Who introduced you to him or him to you? A. A couple of boys.

Q. What were their names? A. George Patrick.

Q. Where does he live? A. He lives at 887 Fourth Avenue.

Q. In Troy? A. Yes, sir.

Q. Does he still live there? A. Yes, sir.

Q. And who else? What other boy was it that introduced you to him or him to you? A. Bobby Gelina.

Q. What? A. Bobby Gelina.

Q. Could you spell that last name for us? A. No, sir, I don't know how to spell it.

Q. Where does he live? A. Corliss Park.

Q. Does he still live there? A. Yes, sir.

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

EDWARD F. LABELLE,
Defendant,

and

RICHARD M. LABELLE,
Defendant-Appellant.

Indictment No. C-1886.

RECORD ON APPEAL.

Volume II—Pages 649 to 1272.

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Troy, N. Y.

Colloquy

The defendants are remanded and the Court Officer may announce a recess, 15 minutes.

(Whereupon at 11:25 A. M., a recess was taken.)

(12:20 P. M.)

(Same appearances. Arnold Louis Bardossi takes the witness stand. The jury enters the jury box.)

Court Clerk: Continue the case of the People of the State of New York against Edward F. LaBelle and Richard M. LaBelle. The two defendants are present with their attorneys. The District Attorney is present with the Assistant District Attorney, and there are sixteen jurors in the box, Your Honor, the same as when we left for recess.

Judge Knight: Mr. Russell, I understand you offered People's Exhibit 38 for Identification in evidence.

Mr. Russell: I did offer it in evidence, Your Honor.

Mr. Burke: Here it is.

Mr. Russell: Thank you.

Mr. Burke: I have read it, Your Honor.

Court Officer: Do you want it marked?

Mr. Russell: I think it's been marked People's Exhibit number 38 for identification and I am offering it in evidence.

Mr. O'Connor: I respectfully request the right, on behalf of Richard LaBelle, to preliminarily examine the witness on the question of voluntariness, Judge.

Judge Knight: You have that right, Mr. O'Connor.

Arnold Louis Bardossi, for People, Preliminary Examination

Mr. O'Connor: Yes.

Mr. Burke: And I would also make the same request when Mr. O'Connor is finished.

Judge Knight: Yes, Mr. Burke, you may.

Mr. Russell: And I would certainly concede they have the right to preliminarily examine, Your Honor, but I want to make this statement for the Court and jury; that I furnished a copy of this statement to Mr. O'Connor, the attorney for Richard LaBelle, in August of this year, and that I understand that Mr. O'Connor, with my permission, furnished a copy to Mr. Burke prior to September 11th.

Mr. O'Connor: I received a copy, a photocopy of the statement, sometime in August, as Mr. Russell has stated, Judge. I don't recall just when it was. There was no question about it.

Judge Knight: You may proceed, Mr. O'Connor.

Court Officer: Judge, do you want this marked?

Judge Knight: It has been marked.

Preliminary Examination by Mr. O'Connor:

Q. Mr. Bardossi, before I proceed to examine you preliminarily, I want to ask you about what I think was an unintentional, unintentional misstatement as to the contents of this written statement by you. If I am wrong you correct me. Did you state that the statement contained an affirmation by Richard that he assisted in placing Rosemary's body in the car? A. I believe you are mistaken, Mr. O'Connor.

Q. If I am mistaken, would you tell me? A. I said that in the oral admissions he said this. I made no mention that this was in the statement.

Q. I see. How long have you been a member of the State Police? A. A little over 15 years.

*Arnold Louis Bardossi, for People, Preliminary
Examination*

Q. And how long have you been a plain clothes investigator? A. Since 1955.

Q. Would that be about seven and a half or eight years? A. It's close to nine years.

Q. Did you say at any time under oath, with respect to the warrant of arrest, that you on December 3rd, 1963 were handed a warrant for the arrest of Richard LaBelle? A. Yes, I believe I did.

Q. That is not the fact, is it, sir? A. It was a John Doe warrant.

Q. Yes. A. Yes, sir.

Q. And have you prior to this time, to today, made a statement under oath that this was a warrant for the arrest of Richard LaBelle? A. I believe I have said that, yes, sir.

Q. And was that an error on your part? A. Well, in a sense it was. I was handed a John Doe warrant but I was instructed to arrest Richard LaBelle with this John Doe warrant.

Q. Well, at the pre-trial hearing here were you asked this question and did you make this answer? Page 84. "All right now, could you please tell the Court where you went and what you did?" "I went to the City of Troy, proceeded to the City of Troy. We had a warrant of arrest for Richard LaBelle." Were you asked that question and did you make that answer, sir, at the pre-trial hearing? A. Yes, sir.

Q. Now, that is not correct and was not a correct answer, was it? A. Perhaps not, but that's the answer I gave.

Q. Was it or was it not a correct answer? A. Well, the John Doe warrant that I was given I executed on Richard LaBelle, so as far as I'm concerned, it was an arrest warrant for Richard LaBelle.

*Arnold Louis Baidossi, for People, Preliminary
Examination*

Q. Maybe we're playing on words, but what I want to know, did the warrant describe Richard LaBelle as the individual to be arrested? A. No.

Q. And you didn't state that at the pre-trial hearing, did you? A. I don't believe I did. I can't remember exactly.

Q. Do you want me to read your answer again? A. Well, you mean what you previously read?

Q. Yes. A. Yes, that's clear in my mind. That's what I answered, there is no question on that.

Mr. Russell: I object to his continuation, Your Honor, as repetitious. The witness has answered the question as best he can.

Judge Knight: Overruled.

Mr. Russell: Exception.

Q. You, sir, knew nothing about this warrant that you executed other than you knew it to be a warrant of arrest delivered to you by, I believe, Mr. Brandon, is that a fair statement? A. Well, I had some knowledge of the background of what caused this warrant to be issued.

Q. Did you procure its issuance or were you present when it was issued? A. No, sir, I was not.

Q. Did you interview the person who was allegedly accosted and/or assaulted and as a result of which the warrant was issued?

Mr. Russell: Now, Your Honor, I object to a continuation along these lines as improper preliminary examination as to the introduction of this item into evidence. This would be, as I understand it, proper cross-examination on his testimony but not proper preliminary examination as to this exhibit.

Mr. O'Connor: May I state my position, Judge?

Judge Knight: Yes.

Arnold Louis Bardossi, for People, Preliminary Examination

Mr. O'Connor: My position is that this is material because it will be my position that if there was an illegal arrest by the officer, the statement necessarily was tainted by the illegality of the arrest, and that is why I am asking these questions.

Judge Knight: Well, you may continue. Overruled.

Mr. Russell: May I have an exception, Your Honor?

Judge Knight: Yes, you may.

Mr. O'Connor: I have forgotten the question.

The Witness: I have too.

(Stenographer reads back last question.)

A. No, sir, I did not.

Q. Did you prior to the arrest examine any written statements made by her? A. No, sir, I did not.

Q. How did you know that Richard LaBelle was possibly involved in the incident? A. Through my conversation with Lieutenant Brandon, and he informed me of the background.

Q. The only knowledge you had was an affirmation by Mr. Brandon, right? A. That's correct.

Q. And that was a short conversation, I assume, in the early—at 8:00 o'clock at the East Greenbush Barracks on December 3rd, 1963? A. Yes.

Q. Were there earlier conversations too? A. Yes, there were earlier conversations.

Q. When did you first hear the name LaBelle in connection with this particular warrant? A. LaBelle? Oh, I would say sometime in the morning hours of December 3rd.

Q. You mean the early morning hours of December 3rd prior to the arrest at Richard's house? A. That's correct.

Q. Which LaBelle name did you hear, Richard or Edward? A. I believe I heard them both but I—

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*Arnold Louis Bardossi, for People, Preliminary
Examination*

Q. Are you sure? A. I can't be absolutely positive, no, sir.

Q. Is it a fair statement that you probably heard the name of the owner of the car involved only? A. Well, I really can't answer the question positively.

Q. All right. Did you inform Richard as the arresting officer of the nature of the charge against him at or immediately prior to the time you arrested him? A. Yes, sir.

Q. What did you say to him? A. I told him that he was under arrest for assault third degree.

Q. Did you at that time tell him whom he was supposed to have assaulted? A. I don't believe I mentioned any name, no, sir.

Q. Did you at that time know the name? A. No, I don't believe I did.

Q. So it's fair to state, isn't it, that it was a little difficult for you to inform this defendant of the nature of the charge when you arrested him because of your lack of knowledge as to the identity of the person allegedly assaulted, is that a fair statement?

Mr. Russell: I object to that, Your Honor, as calling for a conclusion and characterization.

Judge Knight: Overruled.

Mr. Russell: Exception.

A. I could not inform him of the identity of the person assaulted, but I had a working knowledge of the incident as to what had occurred.

Q. My question is addressed to your difficulty in informing him because of your lack of knowledge as to that identity which you have mentioned. Was it difficult for you? A. To inform him of the charge he was arrested on?

Q. Yes. A. No, sir, I knew what the charge was.

*Arnold Louis Bardossi, for People, Preliminary
Examination*

Q. Doesn't—withdraw that. Are you telling me that you completely informed him of the nature of the charge at the time you arrested him? A. I informed him he was being charged with assault in the third degree.

Q. My question, are you telling me that you informed him completely of the nature of the charge? A. I don't understand what you mean by "completely".

Q. In any event, you didn't tell him whom he was alleged to have assaulted, did you? A. No, I did not.

Q. Because you didn't know it? A. I didn't know the name, no. I knew it was a female.

Q. All right. When did you handcuff him? A. When I got him out on the street.

Q. That was shortly after you arrested him, wasn't it? A. Yes, it was whatever length of time required me to leave, to exit from the building, yes.

Q. Could it have been a matter of a few minutes? A. Yes, sir.

Q. Did you—which came first, the handcuffing or the informing of the constitutional rights? A. The handcuffing.

Q. So that there is no question but what you as a police officer informed this defendant, a man whom you had arrested for the commission of a misdemeanor, of his rights after you handcuffed him, is there? A. Yes, sir.

Q. There is a question or— A. No, there is no question.

Q. All right. What did you say to him with respect to his rights? A. Well, I informed him that he was entitled to the aid of an attorney and he could have an attorney if he so desired, and that any statement that he might make could be used against him in a criminal action.

Q. Anything else? A. I believe that's in sum and substance what I informed him of.

Arnold Louis Bardossi, for People, Preliminary Examination

Q. You didn't inform him, did you if you recall, whether or not a misdemeanor was a bailable offense? A. Did I inform him whether it was bailable or not? No, I did not.

Q. Do you recognize that as being one of his rights on that day? A. As I—my understanding of the law is that there is no duty imposed on me to inform him of this.

Q. Did you mention anything at this time, this time now, about Rosemary? A. You mean at the immediate time of the arrest? No, sir, I don't believe I did.

Q. Did you mention anything about Rosemary at or about the time you handcuffed him? A. No, I don't believe I did.

Q. When, if you recall, is the first time that you brought up the death of Rosemary? A. When we were in the car.

Q. And how much time elapsed between the time you got in the car and the time you first mentioned Rosemary? A. Probably five minutes.

Q. What did you talk about in the meantime? A. The assault.

Q. Tell me generally what you said to him and what he said to you about the assault. A. Well—

Q. —in the five minutes that elapsed before you mentioned Rosemary. A. Well, prior to mentioning the assault, I believe I asked him his age, occupation, and then I asked him about—I can't recall my exact words or questions, but I asked him concerning his activity on the night that this assault was supposed to have taken place.

Q. This is all before you mentioned Rosemary? A. That's correct.

Q. And this is at a time when he was under arrest for an assault third degree? A. That's correct.

Q. Alleged assault third degree? A. That's right.

Q. All right. A. And as I say, he denied any knowledge of any girl, and then I asked him whether he knew

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Rosemary Snay and I believe he said no, and that was about the extent of the questioning at that time in the car.

Q. Now, Mr. Garrett was with you, wasn't he, in the car? A. Yes, sir.

Q. And he had testified that you and he engaged in what he characterized as casual talk, once you asked about Rosemary, and got Richard's answers, is that correct? A. Pretty much so, yes, sir.

Q. And how much time on the way out was consumed in casual talk between you and Mr. Garrett in which Richard did not participate? A. Oh, ten minutes possibly, possibly longer.

Q. How much longer? A. I'd say fifteen at the most probably.

Q. During that fifteen minutes nothing was said about the assault third degree charge or about Rosemary, right? A. I really can't recall exactly what was said.

Q. Well, can you recall to the extent of affirming whether or not during that period of time nothing was said about Rosemary? A. I believe possibly in this conversation we did make mention of either the assault or the fact that we were investigating—

Q. It was more, was it not, than casual conversation between you and Mr. Garrett? A. No, I wouldn't say that. I would say it was probably casual conversation and Richard probably took part to a certain extent.

Q. Well, tell me, how did Richard partake? A. There may have been questions addressed to him as to his knowledge concerning this incident. There may have been casual conversation concerning his occupation, his marital status and so forth. As I say, I can't remember exactly the complete details of this.

Q. In any event, was Richard cooperative? A. Yes. I would say he was. He was answering the questions.

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Q. When for the first time did Richard say he didn't do anything? A. I would say when we asked him whether he wanted an attorney or not.

Q. And he said that at other times later on, didn't he? A. Yes, sir.

Q. No question about that, sir? A. No.

Q. There is no question? A. No question.

Q. You knew, did you not, that this was a warrant procured by County Detective Barry from Troy Police Justice Daly, didn't you? A. I knew it had been procured from Judge Daly.

Q. Did you intend at any time on this day to bring Richard before Judge Daly so that he could be arraigned on the charge and possibly bailed?

Mr. Russell: I object to what was inteded, Your Honor.

Judge Knight: Well, "possibly bailed" may go out. You can ask the rest of your question.

Mr. O'Connor: I will consent it go out.

The Witness: Could I have the question again?

(Stenographer reads back the last question.)

Mr. Russell: I renew my objection; it calls for a conclusion.

Judge Knight: Sustained as to the latter part of the question.

Mr. O'Connor: All right.

Q. Did you ever on December 3rd bring Richard for arraignment on this warrant of arrest before Judge Daly? A. No, sir, I did not.

Q. Do you know of your own knowledge now whether or not to this day Richard has ever been arraigned on this charge before Judge Daly? A. To my knowledge, no.

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Q. What happened when you got to the barracks? A. We came into the station, we checked into the blotter.

Q. That's immaterial. I really asked you if there was a time when you and Richard and others were in a room which has been described as the size of an average bedroom by Mr. Cholakis when he was a witness in the pre-trial hearing. A. Yes, sir, there was.

Q. What time did you get into that room? A. I would say it was shortly after 11:00 o'clock.

Q. What time did you leave Richard's home? A. Oh, I'd say probably 10:30.

Q. To save time, were you at the station or at or about the station generally from this time, from around 11:00 o'clock, until the time that Richard was arraigned? A. Yes, generally I was.

Q. And would you be able to estimate for us in hours the number of hours Richard was detained by the State Police before he was arraigned? A. Approximately fifteen hours I would say.

Q. Aren't you in error there? A. I could be, yes.

Q. All right, let's figure it out if we may. He arrived there by your estimate at 11:00 o'clock, is that correct? A. Correct.

Q. He was arraigned, I believe you have testified to, at some earlier hearing, around 4:15 A. M., is that correct, on the morning of December 4th? A. Approximately around 4:00 A. M.

Q. Wouldn't that be a period of continuous detention of between seventeen and eighteen hours, sir? A. I'd say fifteen to sixteen myself.

Q. Would you wait a minute? 11:00 to 11:00 P. M. is twelve, isn't it? A. Correct.

Q. 11:00 to 4:00 A. M. is five more hours, isn't it? A. Right.

Q. Wouldn't that be seventeen hours, sir? A. Yes.

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Q. Then it is approximately seventeen hours and not fifteen, isn't it, sir? A. Yes.

Q. Was that a period of continuous detention which commenced, at least, because of the execution by you of a warrant of arrest for an assault which occurred in the City of Troy? A. It was a continuous period of detention, yes, sir.

Q. Was it a detention which commenced by reason of a warrant of arrest charging an assault within the City of Troy? A. And also the investigation of a homicide.

Q. But do you mean by the use of the word "and also" to concede that the detention commenced as a result of the execution by you of a warrant of arrest for an assault which was committed in the City of Troy? A. Yes.

Q. Was the detention or any part of it ever in the City of Troy? A. In the City of Troy? No, sir, except for the time that he was taken into custody and transported through the City of Troy.

Q. How long did that take? A. Twenty minutes.

Q. Other than that twenty minutes, the detention was in the Town of East Greenbush, wasn't it? A. Yes, sir.

Q. Did you again after you and Richard got into this room you have described—again do I understand, advise him of his constitutional rights or did someone do that in your presence, sir? A. I did, sir. I again advised him of his constitutional rights.

Q. Why, if I may ask, did you find it necessary to re-advise him of his constitutional rights? A. Well, in view of the recent court decisions which have held—it imposes the duty on a police officer, we feel, and we also are instructed in our rules and regulations that prior to taking a statement from any prisoner we are to advise him of his constitutional rights.

Q. Is that now a matter of policy within the department? A. Yes, sir, it is.

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Q. How many times are you told to advise a defendant of his constitutional rights? A. There are no specific number.

Q. It wouldn't have been because you didn't advise him when you arrested him, would it? A. No, sir.

Q. Or it wouldn't have been because your advice was faulty at that time, would it? A. No, sir.

Q. The narrative as to the oral admissions you received from Richard during your questioning is substantially the same as you testified on the pre-trial hearing, isn't it? A. I beg your pardon?

Q. Your narrative presently as to the oral admissions made by Richard, if they can be denominated admissions, are the same as you previously testified? A. Substantially, yes, sir.

Q. Most important to Richard, there was not in the course of these oral admissions any real admission, as we know that word, as to involvement by Richard in either the rape or the killing, is that a fair statement? A. Do you mean actual—I really don't understand the word "involvement" in this instance.

Q. All right, I will withdraw that question if you don't understand it. Did Richard at any time during the course of the period of time that you were talking with him, and before the written statement was taken, did Richard ever state that he raped or killed Rosemary? A. That he himself?

Q. Yes. A. No.

Q. I am defending him. You are sure about that? A. No.

Q. You want to be fair here, is that correct? A. Correct.

Mr. Russell: Your Honor, I object to this in the sense that this is the question which the Court and jury is going to determine, and that these are con-

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clusions which I don't think are fair contained in that form. Therefore, I object to it.

Judge Knight: Overruled.

Mr. Russell: All right. Exception.

Q. Was this seventeen-hour period of detention a detention period during which Richard did not talk to a lawyer? A. Yes, sir.

Q. Was it a period of detention during which he did not talk to his wife or to any member of his family? A. Yes, sir.

Q. Did he in your presence at any time during the seventeen hours request permission to talk to (a) his lawyer? A. No, sir.

Q. Or (b) any member of his family? A. No, sir.

Q. Now, let's get to the lie detector test, if you will. Tell me again what went on as far as conversation between—in your presence concerning the lie detector test and when it was. A. Well, as I previously stated, Lieutenant Brandon asked Richard if he would take a lie detector test and he agreed to do so.

Q. Was this around 3:00 o'clock did you say? A. Yes, approximately, I believe I have testified 3:00 o'clock.

Q. There is no question, is there, but what Richard did not originally broach or propose the subject of the taking of a lie detector test? A. No, sir.

Q. The first one to mention it was your superior, Mr. Brandon, isn't that correct? A. That's correct.

Q. Now, at this time you knew, of course, that the results of a lie detector test are inadmissible in a Court of law of New York State, didn't you? A. Yes, sir.

Q. Did you take the trouble to advise Richard of that fact? A. No, sir, I did not.

Q. Did you think about that and after thinking about it fail to advise him, or did you just overlook it? A. I don't believe I thought about it one way or the other.

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Q. You had knowledge though, didn't you, of that fact, namely that the results would be inadmissible in New York State? A. Yes.

Q. Did you ever at any other time prior to the giving of the test instruct Richard that the results of this test are inadmissible in a court of law, Richard, in words or substance? A. No, sir.

Q. Did anybody in your presence, particularly Mr. Brandon? A. No, sir.

Q. At the time Mr. Brandon proposed the giving of a lie detector test to Richard, were you both then aware of his social background? A. You mean his past history? I don't believe so, no, sir.

Q. Were you then or had you troubled to become aware at that time of his educational background? A. I believe, yes, we had his educational background because that would be taken at the time of the arrest report.

Q. Is that true of Edward, by the way, too? A. I couldn't—I don't know.

Q. Now, it can't be controverted, can it, that you and your associates gave a lie detector test to Richard knowing that its results would be inadmissible? A. No, I don't believe.

Q. There's no question about it, is there, so I won't belabor the subject? There is no question about it, is there? A. I have no duty imposed on me to do this.

Q. I am not asking you if you had a duty. I am asking you as to what you did and—you and your associates, and there is no question again, is there, but what the lie detector test was administered by you and your associates with full knowledge on your part and on their part that its results would be inadmissible in a court of law and at this trial?

Mr. Russell: Now, Your Honor, I submit that that is improper form as to this witness; that he

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doesn't know what the others did do and what their knowledge is. If he wants to limit his question to this witness, that's different. I won't object, but I object to the blanket question as to the knowledge of all the police officers.

Mr. O'Connor: I will withdraw it as to the others. It is objectionable.

Q. You knew, didn't you, when the lie detector test was proposed and when it was administered that its results were inadmissible here?

Mr. Russell: I object to that as repetitious, Your Honor. It's about the fourth time.

Judge Knight: Well, it is. He has answered it many times but he can answer it again.

Mr. Russell: Exception.

A. The fact that it was inadmissible, the results? Yes, sir, I knew it was inadmissible.

Q. Tell me again what the oath was that you took when you became a trooper. A. As best I can remember it, it was to uphold the constitution of the United States and the State of New York, and to enforce the laws of the State of New York.

Q. Did you swear solemnly to obey the laws of the State of New York? A. I believe it's in the form of a written sworn statement.

Q. Is it in the form of a written sworn statement that, "I will obey the laws of the State of New York"? A. Yes, sir.

Q. Are you familiar, in connection with that last question—aren't you familiar with Section 165 of the Code of Criminal Procedure of the State of New York, and if you're not I'll be glad to show it to you, sir. A. I believe you are referring to prompt-arraignment statute.

Q. Yes, sir. A. Yes, I am.

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Q. And does not Section 165 of the Code of Criminal Procedure of the State of New York read as follows: "The defendant must in all cases be taken before the magistrate without unnecessary delay and he may give bail at any hour of the day or night"? Is that your recollection of this particular section? A. I believe that's substantially it, yes.

Q. Were you familiar with it—the section—on December 3rd and 4th, 1963 while you were investigating the Snay homicide and the alleged assault on Second Avenue involving Richard? A. Yes, sir.

Q. Are you familiar with Section 1844 of the Penal Law of the State of New York, sir? A. About delay in arraignment?

Mr. O'Connor: May I tell him?

Judge Knight: Yes.

Mr. Russell: What's that, 1844?

Mr. O'Connor: Yes. I will show you the section.

The Witness: All right.

(Court Officer takes book from Mr. O'Connor and hands it to the witness.)

A. Yes, sir, I am familiar with that.

(Witness hands book back to Mr. O'Connor.)

Q. And what does that section provide, namely Section 1844 of the Penal Law of the State of New York?

Mr. Russell: I object to the question and I object to the witness—

Judge Knight: Do you want him to cite that law verbatim?

Mr. O'Connor: No, I would be content if he can summarize for the jury.

Judge Knight: You may answer.

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A. I believe it outlines that it is a misdemeanor for a police officer not to promptly arraign a prisoner.

Q. Isn't the phraseology of the section that a public officer who wilfully and wrongfully delays to take such person before a magistrate is guilty of a misdemeanor?

A. Yes, sir.

Q. Now, were you aware of the existence of this last section, namely 1844 of the Penal Law of the State of New York, on December 3rd and on December 4th, 1963?

A. Yes, sir.

Judge Knight: Mr. O'Connor, I think we better suspend at this time, and I admonish the jury that they should not discuss this case on trial or any subject connected with it among yourselves or with others, nor to allow the case to be discussed in your presence. If anyone should discuss it in your presence, you should notify that person that you are a juror. If he persists, you should inform the Court. You should not form or express any opinions until the case is finally submitted to you for your determination and your deliberation. We will take a recess at this time until 2:30 this afternoon. The defendants are remanded.

(1:02 P. M.)

Recess

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(2:33 P. M.)

(Same appearances. Arnold Louis Bardossi takes the witness stand. The jury enters the jury box.)

Court Clerk: Continue the case of the People of the State of New York against Edward F. LaBelle and Richard M. LaBelle. The two defendants are present with their attorneys. The District Attorney is present with the Assistant District Attorney, and there are sixteen jurors in the box, Your Honor, and I will call the roll.

(Court Clerk calls the roll of jurors.)

(Court Clerk: There are sixteen jurors in the box, the same as when we left for luncheon recess, Your Honor.

Judge Knight: Mr. O'Connor, you may continue.

Mr. O'Connor: Thank you, Your Honor.

Preliminary Examination by Mr. O'Connor (Continuing):

Q. When we recessed, Mr. Bardossi, you and I were discussing, I believe, statutes or laws in the State of New York which I characterized as prompt-arraignment statutes, is that correct? A. Yes, sir.

Q. And you, I believe, testified that you were aware of the existence of these statutes on the 3rd day of December and the 4th day of December, 1963, is that correct? A. Yes, sir, that's correct.

Q. Is it true that one of them, to wit: Section 1844 of the Penal Law, provides that a wilful failure on the part of a police officer to arraign a prisoner within a reasonably prompt time is a misdemeanor? A. Yes, sir.

Q. Now, with regard to wilfulness on your part, did Mr. Cholakis, the Assistant District Attorney of Rens-

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selaer County, speak to you about arraigning Richard at approximately 11:00 o'clock in the evening of December 3rd? A. No, sir.

Q. Did he—withdraw that. Did he to your knowledge speak to the County Detective Barry or Mr. Brandon about arraigning Richard LaBelle at or about that time? A. Not to my knowledge, no.

Q. If he did, you don't know about it because obviously you were not there, right? A. That's correct.

Q. I ask that because I believe there is testimony under oath by Mr. Cholakakis when he testified as a witness in the pre-trial hearing that at about that time he spoke to either you or Mr. Barry or Mr. Brandon.

Mr. Russell: Your Honor, I object to counsel's testifying. The record speaks for itself and I don't know whether that's an accurate presentation.

Judge Knight: That question, Mr. O'Connor, may be stricken from the record, and the jury is instructed to disregard it.

Q. Excuse me a moment. Now, you understand that I'm questioning you now to determine whether or not the signed statement which has been offered was the voluntary act of the defendant, Richard LaBelle, don't you? A. Yes, sir.

Q. And do I understand that you say that it was? A. Yes, sir, I do.

Q. And do I understand that you say that it was despite the fact that there was a detention of approximately seventeen hours without an arraignment, is that correct? A. That's correct.

Q. And do I understand you to say that it was despite the fact that a lie detector test was administered to him prior to the time he signed it, is that correct? A. Yes, sir.

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Q. Do I understand that you say that it was despite the fact that he did not talk with an attorney prior to the signing? A. Yes, sir.

Q. Do I understand that you say that it was a voluntary act on his part despite the fact that he did not talk to his wife or any member of his immediate family prior to the signing? A. Yes, sir.

Q. Was Richard under constant continuous guard prior to the time that he signed the statement? A. My best recollection is that he was, yes, sir.

Q. Was anyone authorized to be near him in that room other than members of the New York State Police Department? A. No, sir.

Q. Specifically was any—did any newspaper photographer take his picture in that room, in the room where he was being interrogated, prior to the time that he signed this statement? A. Not to my knowledge.

Q. By reason of the nature of your duties on that day, could such a photograph have been taken without your knowledge? A. I would have to say yes.

Q. And this would have been—you don't know of your own knowledge, do you, sir? A. No, sir, I do not.

Q. Did you type the statement, sir, or did Trooper Winnicki? A. I did, sir.

Q. Did you put in the statement everything that Richard told you? A. Yes.

Q. Have you told us everything that Richard told you? A. That is in the statement?

Q. Have you told us everything that—no. I see. Have you told us everything that Richard told you orally or in the statement? A. I've given you generally the gist of what he said, not in exact detail.

Q. Without mentioning any names, did he tell you anything about fear, without mentioning any names? A. Yes, sir.

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Q. Did you put that in the statement? A. Yes, sir.

Q. I don't know if you know the answer to this but I must ask you. Do you know the difference legally, and if you don't tell me so, sir, between an exculpatory statement and an inculpatory statement? A. No, sir, I don't believe I do.

Q. You testified before the Grand Jury, did you not?

A. Yes, sir.

Q. Did you tell the Grand Jury about the statement?

A. Yes, sir.

Q. Was it through you that the statement was offered in evidence before the Grand Jury? A. Yes, sir.

Q. If it was offered in evidence? A. Yes, sir.

Q. And it was, was it not? A. It's my recollection it was.

Q. Did you tell the members of the Grand Jury that it was preceded by a lie detector test?

Mr. Russell: Your Honor, I am going to object to this as being outside the scope of what I call a preliminary examination.

Judge Knight: Yes, I think so. What he told the Grand Jury, Mr. O'Connor, has no place here unless you want to question the testimony there.

Q. Do you know of your own knowledge whether or not the lie detector test came before the statement? A. I would say yes.

Q. By that I mean the sequence. Isn't it true that Richard was given the lie detector test before he signed the statement which is being offered? A. Yes, sir.

Q. Now, how soon, if you know, after the completion of the lie detector test did Richard indicate his willingness to give a signed statement? A. I don't really know. I can't answer that of my own knowledge.

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Judge Knight: Were you present at the lie detector test?

The Witness: No, sir.

Q. Have you previously in a pre-trial proceeding indicated how soon after the lie detector test Richard indicated his willingness to give a statement? A. I may have in previous testimony, yes.

Mr. O'Connor: Judge, may I have one of the exhibits, please?

Judge Knight: Yes.

Mr. O'Connor: I want Mr. Bardossi's affidavit. (Court Clerk hands a paper to Mr. O'Connor.)

Mr. O'Connor: Would you kindly mark this Defendant Richard LaBelle's exhibit?

(Stenographer marks affidavit as Defendant Richard LaBelle's exhibit 4 for Identification, 10/28/64.)

Q. I show you in connection with my last question, Mr. Bardossi, Defendant Richard LaBelle's Exhibit number 4 for identification, and ask you if on—ask you what it is. A. It's an affidavit I submitted on, I believe, the 29th day of February, 1964.

Q. This is, I believe—and you correct me if I'm wrong—an affidavit which you executed and swore to under oath before Meade S. Kniskern on the 29th day of February, 1964, in connection with a pre-trial motion in this prosecution, isn't that correct? A. Yes, that's correct.

Q. And isn't it true that in that sworn affidavit you stated that—and I am quoting—may I show it?

Judge Knight: Yes.

Q. "Immediately after the completion of the above-mentioned test, your deponent was advised that the defendant, Richard M. LaBelle, wanted to make a statement." A. Yes.

Q. So that—

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Mr. Russell: Your Honor, I object at this time primarily by reason of the fact that this is improper examination preliminarily. This type of attack may be used on cross examination but I object to it now and I move that the question and answer be stricken from the record.

Judge Knight: Overruled.

Mr. Russell: Exception.

Q. So it is true, is it not, that immediately after the giving of the lie detector test, Richard indicated that he wanted to make a statement? A. I would say yes, but not—I can't say this of my own knowledge.

Q. Well, haven't you said it under oath in this affidavit which you swore to approximately three months after November 28th, 1963? A. I don't think I said in that statement how that information came to me.

Q. No, I didn't ask you that, if you don't mind. I am asking you if you didn't state in this affidavit, sworn to before you on the 29th day of February, 1964, that "immediately after completion of the above-mentioned test your deponent was advised that the defendant, Richard M. LaBelle, wanted to make a statement"? A. I said that, yes.

Mr. O'Connor: I haven't any further questions.

Judge Knight: Mr. Burke.

Mr. Burke: As I understand it, this is just in regard to the preliminary examination of this witness.

Preliminary Examination by Mr. Burke:

Q. What time of the—if you know, what time of the day or night did the lie detector test begin? A. I can't answer exactly what time the test was given. I can give

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you a period of time in between which I know they probably were performed.

Q. All right, give us that then. A. I would say they were performed between approximately 8:00 and 11:00 P. M. that night.

Q. So that your testimony is that this test took about three hours, is that correct? A. Yes, sir.

Q. And you say you were not present when that was given? A. No, sir.

Q. All right now, when did the defendant, Richard LaBelle, tell you or other members of the police department that he was ready to make a statement? A. I'd say approximately 11:10 that night, the night of December 3rd.

Q. About ten minutes after it was over with? A. Approximately then.

Q. Are you able to tell us how many members of the State Police were present when this lie detector test was given for the period of three hours? A. You mean that actually administered the test?

Q. Yes, not at the same time but all told. A. I can only say what I believe. I believe there were only two present; only two persons conducted the test.

Q. Were you ever present when one of these lie detector tests was given? A. On this occasion?

Q. No, any occasion. You say you weren't present on this occasion. A. Right.

Mr. Russell: Object to this, Your Honor, as too vague and not pinpointed as to time.

Judge Knight: Well, he may answer if he was ever present at a lie detector test.

A. Not an actual test, I don't believe I ever was.

Q. Well, the test consists of questions and answers, doesn't it? A. Yes.

Arnold Louis Bardossi, for People, Direct

Q. At about 3:00 in the afternoon, as I understand it, Richard LaBelle stated that he was willing to submit to this lie detector test, is that correct? A. Yes, sir.

Q. Were you present when he made that statement? A. Yes, sir.

Q. And who else was present besides you and LaBelle? A. Lieutenant Brandon.

Q. Isn't it a fact, Mr. Bardossi, that at that time Richard LaBelle stated that he would submit to the lie detector test if he had certain guarantees? A. No, sir.

Q. Are you sure? A. Positive.

Q. Did Richard LaBelle state at that time that he would submit to it under certain conditions? A. No, sir; no conditions were outlined.

Mr. O'Connor: What was that, sir? I didn't hear you.

The Witness: I said no conditions were mentioned.

Q. Were any promises made to Richard LaBelle if he would submit to this lie detector test? A. No, sir.

Q. Were any promises made to him if he would sign this proposed written statement that we have here? A. No, sir.

Mr. Burke: That's all.

Mr. Russell: May I ask a couple questions, Your Honor?

Judge Knight: Yes.

Direct Examination by Mr. Russell (continuing):

Q. Investigator Bardossi, you testified that to the best of your knowledge this lie detector test probably took place somewhere between 8:00 and 11:00 P. M., is that right? A. That's correct.

Q. Were you present at it? A. At the time the test was given?

Q. Yes. A. No, sir.

Arnold Louis Bardossi, for People, Direct

Q. Do you know when it started? A. No, sir.

Q. Do you know when it ended? A. No, sir.

Q. So that I believe you said that Richard LaBelle was brought to your presence about 11:10 P. M. if I remember correctly. A. That's correct.

Q. So you don't know at this point whether the lie detector test had ended a half hour before or an hour before or ten minutes before? A. No, sir, I don't know.

Mr. Russell: Just a moment please. I offer the statement in evidence, Your Honor, People's Exhibit 38 for identification.

Mr. O'Connor: May I now make my statement in connection with my—

Judge Knight: Well, do you object?

Mr. O'Connor: I object. I object to the admission of the exhibit on behalf of the defendant, Richard LaBelle, in evidence, because first, it is demonstrated to have been a statement legally coercive and constitutionally—obtained under constitutionally impermissible grounds, because of the fact that the court which issued the warrant of arrest was without jurisdiction, because of the fact of the constitutionally impermissible period of detention before arraignment, and because of the fact that it was taken, in the words of Mr. Bardossi, immediately after the lie detector test, and therefore was the result of the lie detector test; in addition, because of my belief that the statement is totally exculpatory in that it contains no admission either directly or indirectly by Richard of guilt by participation in the acts alleged to have occurred in the indictment and in the Bill of Particulars. Because of that fact, because of its totally exculpatory nature, I submit also in addition to my other objections, that it is immaterial as far as Richard's prosecution is concerned, Judge.

Arnold Louis Bardossi, for People, Direct

Mr. Burke: May I make a motion?

Judge Knight: Yes.

Mr. Burke: Not a motion but enter an objection, if Your Honor please. I join with Mr. O'Connor in the first portion of his objection; namely that this proposed exhibit or statement was not voluntarily made. I object to it on behalf of the defendant, Edward F. LaBelle, on the further ground that such a statement as I have read it, being made by the co-defendant, Richard LaBelle, is not and cannot be binding upon the defendant, Edward F. LaBelle. I further object to the receipt of this evidence on behalf of Edward F. LaBelle, on the ground that it is highly prejudicial to the interests of Edward F. LaBelle, and on this latter ground I move for a mistrial at this time.

Judge Knight: Your motion for a mistrial is denied, Mr. Burke.

Mr. Burke: Exception.

Judge Knight: I think at this time I will excuse the jury for a few minutes, and while you're excused and in the jury room, do not discuss the case among yourselves or arrive at any conclusion. You may leave the jury box now and go to the jury room.

(Jury leaves the Courtroom.)

Judge Knight: I will see counsel in Chambers.

(3:05 P. M.)

Recess

Arnold Louis Bardossi, for People, Direct

(3:30)

The Clerk: We continue the case of The People of the State of New York against Edward F. LaBelle and Richard M. LaBelle. The two defendants are present with their attorney. The District Attorney is present and the Assistant District Attorney is present.

There are 16 jurors in the box, the same as before we left for the recess, Your Honor.

Mr. Russell: Have you got the Exhibit?

The Clerk: Yes.

Mr. Russell: May I have it, Irving?

(Exhibit handed to Mr. Russell.)

Mr. Russell: I offer in evidence People's Exhibit 38, the statement of Richard Martin LaBelle, the defendant.

Judge Knight: I am going to receive only a portion of that statement.

I have prepared a portion of what the Court will receive in evidence, and in the portion I have prepared to be received, there are in places three dashes. Those dashes indicate the omissions that I have made from Exhibit 38.

I'll hand the District Attorney the portion of the statement of the defendant, Richard Martin LaBelle, which you may offer in evidence, and I'll hand to each attorney a copy of it.

(Copies handed to attorneys for defendants and Mr. Russell.)

Mr. O'Connor: May we respectfully enter an exception to your act in admitting any part of the statement?

Mr. Burke: May I have an exception on the record, too, Your Honor?

Judge Knight: You may.

Arnold Louis Bardossi, for People, Direct

Mr. Russell: I would like this portion of the statement which the Court has handed to me, marked People's Exhibit 38 in evidence, and make the statement that that is the portion which the Court admits into evidence.

Mr. O'Connor: I think we should concede in behalf of the defendants that that is the portion, namely, Exhibit 35 which the Court—

Mr. Russell: 38.

Mr. O'Connor: —38 which the Court has admitted into evidence.

Judge Knight: Mr. Burke?

Mr. Burke: Yes, that is a true—

Judge Knight: You all admit that the portion I have prepared is as exactly taken from the original record?

Mr. Burke: Yes, sir.

Mr. O'Connor: Yes, Your Honor.

(Received and marked in evidence, People's Exhibit 38.)

Mr. Russell: I have only one more.

Judge Knight: You offer that?

Mr. Russell: In evidence.

Judge Knight: That is Exhibit 39 for identification?

Mr. Russell: I had had it marked People's Exhibit 38 in evidence, that portion.

Judge Knight: You should mark that 39.

Mr. Russell: Please mark this Exhibit 39.

(Received and marked in evidence, People's Exhibit 39.)

Judge Knight: In evidence. You offer it in evidence?

Mr. Russell: I offer it in evidence, Your Honor, People's Exhibit 39.

Judge Knight: Mr. O'Connor, you object and Mr. Burke objects?

Arnold Louis Bardossi, for People, Direct

Mr. O'Connor: Only on the ground previously stated, Judge, only as to its voluntariness.

Mr. Burke: On the other grounds that I mentioned, Judge, I'd like to have that on the record.

Judge Knight: All right.

I'll have it received.

Mr. Russell: To clarify this, Your Honor, may I make this statement: People's Exhibit 39 just received in evidence is that portion of People's Exhibit 38 marked for identification which the Court approves for admission into evidence.

Judge Knight: That's correct.

Mr. Russell: May I read this to the jury, Your Honor?

Judge Knight: Yes.

Mr. Russell:

"State of New York,

"County of Rensselaer, ss:

"Town of East Greenbush,

"Page number 1.

"RICHARD MARTIN LABELLE being duly sworn deposes and says; I have been told that I need not make this statement and I have been advised of Constitutional Right against self incrimination and I do say of my own free will and with the full knowledge that what I may say can be used against me in a criminal action.

"I am married and live with my wife at 133 First Street, Troy, New York, I am 23 years of age, I have no permanent job but I work for my brother on weekends and he has a garbage collection route. On Thanksgiving Day, November 28, 1963 I got up about nine or ten o'clock in the morning, I had breakfast and I sat around the house having breakfast with my brother Raymond and his wife Ruth and we talked and then I took a shower and shaved. At about 11:00 A. M. by brother Edward

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

EDWARD F. LABELLE,
Defendant,

and

RICHARD M. LABELLE,
Defendant-Appellant.

Indictment No. C-1886.

RECORD ON APPEAL.

Volume III—Pages 1273 to End.

THOMAS J. O'CONNOR,
Attorney for Defendant-Appellant,
Richard M. LaBelle,
1704 Fifth Avenue,
Troy, N. Y.

M. ANDREW DWYER, Jr.,
District Attorney, Rensselaer County,
for the People,
Court House,
Troy, N. Y.

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Motions

hour of his impermissible mingling with the panel. Must we take his demonstrably unreliable testimony that he did not do so?

Who can say, Your Honor, whether or not the jurors whom he talked to did not in turn discuss this conversation with other members of the panel to the prejudice of the defendant's constitutional and statutory right to a fair trial.

It is my belief, and I urge, that the conduct of Rosemary Snay's parent was such as to permit a logical inference that there was a constitutionally inhibited interference with the right of the defendant to absolute objectivity on the part of potential jurors in this prosecution and trial for a capital offense.

I therefore move again for the reason stated, for the withdrawal of the jury and a mistrial.

If Your Honor please, I also respectfully move on behalf of the defendant, Richard M. LaBelle, for a dismissal of both counts of the Indictment as to him, on the grounds that the People have failed to prove a prima facie case, beyond a reasonable doubt.

Your Honor, Section 1041 of the Penal Law of the State of New York provides as follows:—and I am quoting, “no person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant as alleged, are each established as independent facts; the former—meaning the death—by direct proof, and the latter—meaning the killing by the defendant—beyond a reasonable doubt.”

Section 1044 of the Penal Law of the State of New York provides as follows: —and I am quoting:

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"the killing of a human being, unless it is excusable or justifiable, is Murder in the First Degree, when committed from a deliberate and premeditated design to effect the death of the person killed, or without a design to effect death, by a person engaged in the commission of a felony."

In this prosecution, here, the defendant, Richard M. LaBelle is being tried on a two-count Murder First Indictment, charging him with the deliberate and premeditated murder of Rosemary Snay and/or with killing her while allegedly engaged in the alleged commission of the felony of Rape in the Second Degree. I say "alleged commission of the felony of Rape in the Second Degree" advisedly, because Section 2010 of the Penal Law as amended by Chapter 525 of the Laws of 1950 mandates a specific averment in any indictment charging that crime, that the defendant so accused was—and I'm quoting: "over the age of 21 years" at the time of its commission, and because, as Your Honor knows, such a specific averment is lacking in the Indictment prepared by the District Attorney's office in the instant prosecution.

Over the weekend, Your Honor, I reviewed almost every page of the voluminous transcript of the testimony adduced by the People in support of the accusations made against the defendant, Richard M. LaBelle, in this Indictment. Over the weekend I also reviewed almost every page of the transcript of the testimony adduced at the pre-trial hearing which Your Honor granted to the defendants under the authority of Jackson against Denim. I find as a result of that review repeated admissions on the part of the State Police and the Rensselaer County District Attorney's office of knowing and deliberate violations of the defendant Richard M. LaBelle's

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constitutional and statutory rights as a person accused of the capital offense of Murder in the First Degree. I find a pattern of continuing and callous abuse of the criminal pleading and of criminal process. I find an almost arrogant and unanimous concession of all of the prosecution witnesses who have knowledge that Richard LaBelle's pre-arraignment, incommunicado detention, after an arrest on a palpably defective "John Doe" Assault Third Information and Warrant, continued for some 17 hours in violation of Section 165 of the Code of Criminal Procedure and Section 1844 of the Penal Law, before LaBelle was arraigned at 4:15 A. M. in the early morning hours of December 4th, 1963 before a Justice of the Peace, Decker, an untrained layman who journeyed from his home to arraign LaBelle at the very site of this inhibited inquisition.

I find, if Your Honor please, the witnesses that appeared before the Grand Jury suppressed and withheld from that honorable body, evidence of the incommunicado detention period and evidence that Richard M. LaBelle's statement was prepared "immediately after"—and I'm quoting from Investigator Bardossi's testimony at page 907 of the trial transcript. I say again "immediately after" the administering of the lie detector test by Investigators McCarthy and Sackel.

However, Your Honor, my weekend research of these transcripts has failed to reveal one iota of credible evidence, either direct or circumstantial, that Richard M. LaBelle conspired or planned the events described in the Indictment and Bill of Particulars with the person who allegedly perpetrated them. Nor is there proof that he actually killed Rosemary Snay after actually raping her, without planning or conspiring to do so with someone else.

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after arriving at the scene of the alleged homicide in Schaghticoke, New York.

The only discovery I was able to make was that the prosecution witness Garrett, Bardossi, Sackel and Brandon affirmed under oath, without reservation, that their investigation of this homicide failed to disclose any evidence of homicidal culpability on the part of the defendant Richard M. LaBelle. As to Garrett's affirmation in this regard, I refer Your Honor to pages 830 and 845 of the transcript. Bardossi's testimony is to be found at pages 934, 935 and 936, while that of Sackel may be examined at page 1009. Inspector Brandon, the ranking officer in charge of every phase of the investigation of the homicidal aspects of Rosemary's death, so testified under oath—and his testimony to be found at pages 1032 and 1033 of the trial transcript.

Now, Your Honor, implicit in the foregoing argument with respect to this motion to dismiss because of the failure of the People to establish a prima facie case, is really a gratuitous assumption on my part for the sake of this argument only that Richard's signed statement was admitted into evidence by Your Honor in accordance with acceptable standards of legal admissibility, both as to voluntariness and otherwise. May I state that I do not wish to be understood as conceding it to be an admissible exhibit. My position is simply that even if it is to be considered on this motion, the People have failed to establish anything but Richard's physical yet non-participating presence at the scene of the homicide, prior to and up to the time of its actual commission.

Now, Your Honor, if we eliminate Richard's signed statement either because of its exclusively exculpatory nature, or because of its legally in-

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fect ed taint by reason of either the 17-hour period of pre-arraignment incommunicado detention, or because of its attached lie detector test stigma, then we have a complete lack of proof in the prosecution's case that Richard was even present in the Schaghticoke area when Rosemary was allegedly killed by someone else. For admittedly, Your Honor the only proof in the People's case concerning he and Rosemary is that he was in her presence on North Mohawk Street, Cohoes, between 7 and 8 o'clock P. M. on November 28, 1963, while she was laughing and joking with someone else, and that they then parted, she on foot, he as a passenger in a motor vehicle, and proceeded in opposite directions on North Mohawk Street, Cohoes, New York.

I refer, of course, Your Honor, to the uncontradicted testimony of the witness Murray—Tommy Murray—at page 342 and 350 of the trial transcript.

Now, Your Honor, this 23-year old defendant enjoys, as he sits here in this Court of Justice today, a constitutional and statutory guarantee that his life and his liberty may not be taken away from him without due process of law. As he sits here by my side, the law mandates that all of us confer upon him his constitutional and statutory presumption of innocence until the people establish the contrary by legally competent evidence beyond—I repeat—beyond a reasonable doubt. Legally competent evidence means more than mere suspicion, conjecture or surmise that Richard's presence led to legally reprehensible conduct towards Rosemary Snay on his part. On the contrary, as I understand the law, it requires the Court to presume on this motion that it did not.

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Finally, Your Honor, this prosecution again is one which, as to the defendant, Richard M. LaBelle, is one based entirely on circumstantial evidence and one in which, if we are to adhere to the rule laid down by the Court of Appeals in *People against Woltering*, 275 New York, 56, 61, the District Attorney's evidence "must be such"—and I am quoting from the *Woltering Case*—"must be such as to exclude, to a moral certainty, every hypothesis." but that of Richard's guilt.

It is my belief from the examination of the authorities that the Court must grant this motion under that rule if the evidence presented by the People in the case against Richard is as consistent with his innocence of any involvement in Rosemary Snay's killing as it might be with his alleged guilty involvement in this thing.

Certainly, Your Honor, Richard's mere non-participating presence at the scene of the alleged homicide is as consistent with my position on this motion of innocent non-involvement by him in the acts alleged in the Indictment, as it is with the guessing and groundless speculation on the part of the State Police and the District Attorney's office that he just had to be involved in some unexplained and unproved fashion because of such non-participating presence.

Thank you, Your Honor.

Judge Knight: Mr. Russell.

Mr. Russell: If I heard correctly, Your Honor. I believe Mr. O'Connor has made four motions, is that right?

Mr. O'Connor: That's right.

Mr. Russell: Four. And I'll try to take them in order even though it might be a little more logical to re-arrange them, but he first moved to strike

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out the testimony of Senior Investigator McKinley insofar as it had any effect upon his client, Richard, and the only thing that I can say as to the testimony of Senior Investigator McKinley, it is one portion of a great deal more evidence submitted by many more witnesses affecting not only Richard, but Edward; that it goes to both of them, but specifically there are certain acts of Richard's which have been testified to here which link him distinctly as a principal in the commission of this crime.

The first, of course, is that over in Cohoes Richard got in the back of the car for the specific purpose of holding the girl down and keeping her in the car while the brother drove over out through Waterford, I believe, and up Oil Mill Hill and up into Rensselaer County, and without this act on Richard's part, the girl could have likely gotten away; and another thing that Richard has done, he helped load the body in the car and he also did certain other things which distinctly places him in the category of being a principal and certainly the very least that can be said is that the People have created a question of fact for the jury, and I won't belabor this any more. Your Honor is more familiar with these 1500 pages of testimony than I am, but there are a number of facts here.

One additional thing that I did mention, we have the written statement—we have the written statement if Richard and the oral admissions of Edward which wrap the whole thing up. Richard tells you exactly what happened and Edward says, "I was with my brother all night." and this plus the fact that we have an overwhelming amount of circumstantial evidence here which points directly to a moral certainty of both these men to me disposes completely of this issue.

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Now, I believe that Mr. O'Connor next addressed himself to the sufficiency of the Grand Jury minutes, and this question was previously decided by Your Honor; a motion was made to inspect the Grand Jury minutes. Your Honor examined the Grand Jury minutes and my recollection is it held—the Court held that they established a prima facie case and the motion to inspect was denied. So I am not going to go all through that one again.

As far as the Snay—Mr. and Mrs. Snay mingling with the jurors is concerned, that issue has also been decided in all respects by this Court; that there was nothing damaging done; these people had a right to be in a public court room. It was established by testimony before Your Honor that not one thing that was said was prejudicial in any way to the defendants' case and each juror as I remember it that was examined here was made aware of this situation and they were asked about this and my recollection is that all 16 of these people didn't even know the Snays or hadn't talked to them or had they talked to anybody who had talked to the Snays, so it seems to me that this matter also has long been disposed of and quite properly so by Your Honor, so I'm not going to spend any more time on that one.

With respect to, I believe the fourth motion which Mr. O'Connor covered a great number of minor elements and wrapped them up in one package, that had to do, as I saw it, with the People having failed to prove a prima facie case. All I could say about that is this: That the Grand Jury have been held by this Court to establish a prima facie case. Out here in the court room we have tripled or quadrupled the proof established in the Grand Jury minutes; the proof out here has been overwhelming

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and far, far beyond a reasonable doubt in both direct and circumstantial, and I don't want to belabor this issue either.

There are a number of points that Mr. O'Connor has raised, such as undue delay and I've already submitted to Your Honor the case of *People versus ford*, 14 New York, 2d, 511, a situation in which a defendant was interrogated far longer than he was here in the case of Richard, and the arraignment in that case was held 23 hours after apprehension.

Now, in this case both the interrogation was shorter than the ten hours; I think somewhere in the nature of four hours. The interrogation and the arraignment approximately 17 hours, so that since this Court of Appeals sustains the People on a longer duration in both interrogation and delay in arraignment, I don't think there is any question about that either.

There are probably a number of other things that I should discuss under this fourth motion of Mr. O'Connor's, but I think the main point is this: That we have—his argument is that we haven't proved a prima facie case and we have proved far more in this court room than was set forth in the Grand Jury minutes, and in addition to all the circumstantial evidence that we've produced, there is People's Exhibit, I believe, 38 or 39 in evidence which is Richard's statement. There are the oral admissions of Edward's which to me make a complete and full case and, therefore, I ask your Honor very respectfully to deny each and every motion made by the defendant Richard LaBelle.

Judge Knight: Mr. O'Connor.

Mr. O'Connor: Yes.

Judge Knight: I must deny each of your motions.

Mr. O'Connor: May I respectfully except, Your Honor?

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about the case in your presence. If they should do so, you should inform them that you are a juror; if they persist, you should notify the Court. You should not form or express an opinion until the case is finally submitted to you for your deliberation and determination.

You may now leave the Courtroom.

(The jury was excused and left the courtroom at 3:25 P. M.)

The Court: All right, Mr. O'Connor.

Mr. O'Connor: If it pleases Your Honor, on behalf of the defendant Richard M. LaBelle, I respectfully renew each and every motion which I made before Your Honor in the absence of the jury at the end of the People's case.

As I recall it, those motions included, first, a motion as to the defendant Richard M. LaBelle to exclude from the record and excise from the record all the testimony of the prosecution witness McKinley, on the ground that the exhibits used by the witness in forming the opinions expressed by him were neither owned, possessed, controlled or used by the defendant Richard M. LaBelle.

The second motion I made, if I recall it properly, Your Honor, was a renewal of the pretrial motion for an inspection of the Grand Jury minutes really, and in the alternative for a dismissal of the indictment after such an inspection of the minutes, by the Court, on the ground that there was insufficient evidence presented to the Grand Jury to warrant the indictment as against the defendant Richard M. LaBelle and on the additional alternative ground that illegal evidence in the form of the direct and proximate result of a lie detector test was submitted to the Grand Jury.

Thirdly, I believe I moved at the end of the People's case for the withdrawal of a juror and a mis-

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trial upon the ground that the comingling of the victim's—alleged victim's father with the panel on September 24, 1964 in this courtroom constituted constitutionally impermissible conduct on their part which deprived the defendant Richard M. LaBelle of his constitutional and statutory right to a fair trial.

And lastly, of course, I moved, I believe, for a dismissal as to the defendant whom I represent on the ground that the People had failed to prove a prima facie case.

Again, Judge, I now renew without further argument each of those motions. I—may I—shall I proceed, Judge?

The Court: Yes.

Mr. O'Connor: I respectfully now move at the end of the complete case for a directed verdict of acquittal upon the ground that upon all of the evidence, no case has been presented by the People which would warrant—which would justify your submission of the case to the jury.

And lastly, I now move at the termination of all of the evidence which has been adduced in this case for a reconsideration by Your Honor of my pre-trial motion for a severance as to the defendant Richard M. LaBelle and, therefore, for the withdrawal of a juror and a mistrial upon the ground that it has been humanly impossible, despite repeated admonitions and justifiable admonitions under the law on the part of Your Honor as the trial justice here, for the defendant Richard M. LaBelle to obtain a fair trial as such is known constitutionally and as a result of the statutes in this state because he has been compelled to go to trial jointly with the co-defendant, Edward F. LaBelle.

Motions

I respectfully move in all of those regards, Judge.

The Court: Mr. O'Connor—did you have anything to say, Mr. Russell?

Mr. Russell: Only this, Your Honor: That with respect to the motions made by the defendant Richard M. LaBelle, at this time, I would renew each and every argument that I advanced in opposition to these same motions at the close of the People's case and I, without taking the time to go through them again at this time would like it recorded that I want those incorporated in my request at this time for denial of each and every motion made by the defendant Richard M. LaBelle.

It is the position of the People that we have proven a prima facie case, that there is a question of fact for the jury; that the People have sustained the burden placed upon the People and, therefore, I do respectfully request this Court at this time to deny each and every motion made by the defendant Richard M. LaBelle.

The Court: Mr. O'Connor, each of your motions are entertained by the Court and denied.

Mr. O'Connor: Yes, Judge. Respectfully I except, Your Honor.

The Court: All right, Mr. Burke?

Mr. Burke: May it please Your Honor, on behalf of the defendant Edward F. LaBelle, I renew each and every motion which I made on his behalf at the close of the plaintiff's—at the close of the People's case and those motions were, in substance, a motion to have a dismissal of the counts in the indictment dismissed on the ground that the evidence submitted to the Grand Jury was insufficient as against Edward F. LaBelle, as a matter of law, and that evidently the statement—the written statement—of the defendant Richard LaBelle was allowed to be used at the session of the Grand Jury without any

State of New York,
County of Albany, ss:
Town of Colonie,

December 2, 1963

MARY CATHERINE DOLAN, being duly sworn deposes and says: I have been told I need not make this statement unless I desire to do so: I do say of my own free will and with the knowledge that what I may say can be used in a Criminal action that I am 14 years old, being born April 7, 1949. I am a Freshman at the Catholic Central High School, Troy, N.Y. and reside with my Mother MARY E. DOLAN at 450 Second Ave. Troy, N.Y.

At this time I am at the Loudonville State Police Barracks in the company of my Mother and wish to make the following statement concerning an incident which occurred to me in the City of Troy, N.Y. on Thanksgiving night 1963.

At approximately 4:30 P.M. November 28, 1963, (Thanksgiving day) I left my home and caught a bus to my girlfriends WINNIE MYSLIWIEC, who lives at 888 Fourth Ave. Troy, N. Y. I remained at Winnies' until about 7:15 P.M. when WINNIE, JOE DOMEY, and RICHY SMITH and I left in Joe's car and drove to River Street near the Van Rensselaer Tavern to pick up BUTCHIE COMBS. When we arrived at Butchies place, Winnie got out and asked me to go up to Butchies with her. I told her I didn't want to go and Joe said, "Either you go with her or you walk home". I didn't know at the time he was kidding so I got out of the car and started walking North on River Street or Second Avenue toward my home, about fourteen blocks. I had walked about ten blocks when an old grey car drove past real slow. A blond headed man, about 19 or 20 years old was riding in this car and said "Hello". I didn't answer and the car continued on and turned right at the corner and stopped. The driver of this car got out and opened the trunk and looked inside. As soon as he saw me he closed the trunk real fast and got back in the car and started going around the block. I continued walking North and this car again came

up behind me and stopped. The blond headed man got out and said "Hey, come here a minute". I didn't answer him and continued walking. This man then walked up to me and grabbed me by the collar of my coat and said "Get in the car". I told him no, I didn't want anything to do with him. I kept walking and he got back in the car but didn't close the door completely. The car followed me up the street just a few feet and then this same blond man walked up behind me, grabbed me by the arm and said "Get in the car, your going for a ride". I said no, to leave me alone and if he wanted any trouble, I would see that he got it. He said "O.K. go ahead". I walked up to this house where there weren't any light on like I lived there and made believe I was going inside. This car then
same

drove on North and turned right at the next corner. I M. D.

thought they might come back so I ran North about two blocks until I came to a house with all the light on. I stood in front of this house and the old grey car drove up by Ted's Fish Fry, parked and turned off its lights. While I stood in front of this house another car drove up and parked near me and the people got out and went into the next house. When this happened the old grey car started up and drove slowly past me. When it did I got the license plate number which was MT-9451. I turned around and started walking South figuring that these men would be looking for me to continue going North. About three minutes later, JOE, WINNIE AND RICHY drove up and stopped. I got in their car and told them what had happened and the license number on the car. I convinced them to park and see for themselves. We parked near my house by the park for about five minutes when this grey car with the license plate MT-9451 drove past. Joe started his car and we chased this old grey car into Cohoes. Whenever Joe would try to pull up alongside this car would pull out and wouldn't let us past. Near St. Bernards Catholic Church in Cohoes, this car stopped for a traffic light and Joe pulled alongside.

MRS. MARY E. DOLAN
W F WHITE
F. H. TEEPLE

I was riding in the back seat of Joe's car and Joe, Winnie and Richy were in the front. When we pulled alongside of this other car, Richy said to the driver, "Why did you try to grab her". The driver of this car said, "Who". Richy said "The girl in the back seat". When he looked around, I turned my head so he couldn't see my face. Joe then asked this man why he tried to pick me up and nothing was said. Richy repeated himself and said "Why did you try and grab her for". The blond headed man who was riding in the car said, "Well, I didn't try and grab her". I said, your lying and I'm going to report you to the Police and the blond headed one said "Go ahead". At about this time the light changed and this car drove off and went toward Guptills Skating rink on that road. We turned around and drove back to Winnie's house. When we got to Winnie's about ten minutes of eight.

I had never seen either one of these men before nor have I seen either one of them since we pulled along side of their car in Cohoes. The only description I can give is that the driver was maybe five foot five or six and very stocky with big arms. The blond headed fellow might have been a little bit shorter.

I have read this statement consisting of two pages and swear it is the truth to the best of my knowledge and recollection. I have not been forced or threatened in any way nor have any promises been made to me.

Signed: MARY DOLAN

Witnessed:

MRS. MARY E. DOLAN

W F WHITE

F. H. TEEPLE

Dated December 2, 1963 at 8:15 P.M.

STATE OF NEW YORK,
COUNTY OF RENSSELAER } SS.:
CITY OF TROY,

POLICE COURT OF THE CITY OF TROY

LEO P. BARRY COUNTY DETECTIVE RENSSELAER COUNTY
UPON INFORMATION AND BELIEF

residing in said City, County and State, makes oath and complains before the Police Justice of the City of

Troy, N. Y., that on the 28TH day of November, 1963,

Rever Street in said City and County, one "JOHN DOE" whose

NAME AND IDENTITY IS UNKNOWN

make an assault upon this deponent and did then and there beat, wound and ill-treat this deponent,

without cause of provocation

attempting to force Mary Dolan into a 1954 dark
Chevrolet Sedan

in violation of Sec. 244 of the Penal Law.

Sworn to before me this 2nd
day of November, 1963

Joseph E. Daily
Police Justice, City of Troy.

L. P. Barry
County Detective

To be argued by
Thomas J. O'Connor,
Troy, N. Y.



New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

RICHARD M. LABELLE,
Defendant-Appellant.

Indictment No. C-1886.

Rensselaer County Clerk's Index No. 86788.

DEFENDANT-APPELLANT'S BRIEF.

THOMAS J. O'CONNOR,
Attorney for Defendant-Appellant,
1704 Fifth Avenue,
Troy, N. Y.

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4. The statements, both oral and written, were involuntary as a matter of law and inadmissible because of the usual and uncontradicted proof peculiar to this particular prosecution, that they were elicited after the State Police wilfully delayed arraigning defendant for a period of four hours subsequent to a request by the Assistant District Attorney that such arraignment be had 69
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B-2. Evidence of any oral or written statement by the defendant-appellant during his extended period of illegal detention on a jurisdictionally defective "John Doe" assault warrant of arrest was illegal evidence. It vitiated the entire Grand Jury proceeding.

The sham arrest of the defendant-appellant on December 3, 1963, on a jurisdictionally defective information and warrant of arrest charging him with Assault in the Third Degree on complaint of Rensselaer County Detective Leo P. Barry infected his transcribed statement with a continuing and ineffable taint of illegality. Police arrests which are patently a pretext employed by law enforcement agencies to insure the incommunicado detention of individuals, until a confession of a more serious crime can be wrung from the suspect, have been vigorously interdicted by the Court of Appeals:

"The Court should not tolerate such a flagrant abuse of criminal process as that in which the police here engaged (see *Rex vs. Dick* [1947], 2 D. L. R. 213, 225; see also, *Culombe vs. Connecticut*, 367 U. S. 568, 627, 632). As the Court of Appeals for the Province of Ontario declared in *Rex vs. Dick* (1947), 2 D. L. R. 213, 225, *supra*: A case not unlike the one before us, where a murder suspect was arrested for vagrancy and then questioned with respect to the murder of which she was suspected, 'it seems to me to be an abuse of the criminal law to use the purely formal charge of trifling offense upon which there is no real intention to proceed, as a cover for putting the person under arrest and obtaining from that person incriminating statements not in relation to the charge laid, and made the subject of a caution, but in relation to a more serious and al-

together different offense * * *.' It is trifling with the long established maxim '*nemo tenetur seipsum accusare*,' and has more than the mere appearance—but, in the intended result it has at times the effect—of a trial '*in camera*' before even the charge has been laid."

People vs. Weinstein, 11 N. Y. 2d 1098, 1099, 1100—1962. Dissenting Opinion, Fuld, J.

Two years later the Court of Appeals seems to have adopted Judge Fuld's reasoning in his dissent in the *Weinstein* case (*supra*) for by this time only Judge Dye and Judge Burke questioned it in a factually similar case:

"Judgment reversed and the indictment dismissed upon authority of *People vs. Myer* (11 N. Y. 2d 162). The police officer who preferred the vagrancy charge upon which appellant was arraigned acknowledged that it was merely a pretext upon which to hold him for homicide."

"* * * Judge Dye and Burke dissent and vote to affirm the authority of *People vs. Weinstein* (11 N. Y. 2d 1098)."

People vs. Davis, 13 N. Y. 2d 690, 691—1963.

Richard M. LaBelle was arrested by Investigator Garrett and Senior Investigator Bardossi, at around 10:15 A. M. on the morning of December 3, 1963, on a "John Doe" warrant of arrest. The warrant of arrest accused "one John Doe, whose true name and identity is unknown" of assaulting one Mary Dolan in the City of Troy, N. Y., on November 28th, 1963, in violation of Section 244, of the Penal Law (Exhibit Volume, pp. 57-58). It had been issued by Hon. Joseph F. Daly, Police Court Justice of Troy, N. Y., at around 8:00 o'clock, P. M. on the preceding evening, after Rensselaer County Detective Leo P. Barry had sworn to an information before the Police Justice "upon information and belief" alleging that "John Doe, whose true name

and identity is unknown" assaulted the aforesaid Mary Dolan in the City of Troy on the aforesaid November 28, 1963 (Exhibit Volume, pp. 62-63). The sources of the information and the grounds for his belief were not set forth in the information, and understandably so, since Detective Barry, the informant, possessed no personal knowledge of the event (p. 1619), but was merely acting in accordance with telephonic instructions (pp. 1429, 1613) from New York State Police Lieutenant Inspector Brandon "to locate a Judge" and to "obtain some kind of warrant" (p. 429). At the time, Lieutenant Inspector Brandon telephoned Detective Barry from the Loudonville, N. Y., State Police Barracks on the evening of December 2, 1963, he informed him that the State Police had obtained a signed statement from Miss Dolan (Exhibit Volume, pp. 59, 60 and 61) in which she stated that two men, one "very stocky with big arms," and the other "a blond headed fellow" had assaulted her on November 28, 1964. Barry further testified that the appellant was not a "blond headed fellow"; his hair was dark on December 3, 1964 (pp. 432-433). Neither Miss Dolan nor her signed statement were ever seen by the Police Justice at the time when he issued the warrant (pp. 430, 1270, 1272, 1618, 1626).

The foregoing recital of the chain of legally bizarre events leading up to the issuance of the "John Doe" warrant of arrest upon which the defendant-appellant was apprehended indicates clearly that the arrest was one predicated on a legally insufficient information, and one predicated on jurisdictionally defective pleadings and therefore palpably illegal. It is fundamental that where an information is used as the basis for the issuance of a warrant of arrest, it is insufficient if it rests upon information and belief, without a statement therein of the sources of the information and the grounds for the belief.

Article 1, Section 12, New York State Constitution;
 Section 8, Civil Rights Law;
People vs. Taylor, 159 Misc. 536, 1936;
People vs. Bertram, 302 N. Y. 526, 1951;
People vs. Belcher, 302 N. Y. 529, 1951;
People vs. James, 4 N. Y. 2d 482, 485, 1958;
People vs. Conserva, 42 Misc. 2d 782, 1964.

Since allegations on information and belief, unsupported by sworn depositions on knowledge, render an information jurisdictionally defective as hearsay (*People vs. Bresee*, 28 N. Y. Supp. 2d 539, 541), the arrest of the defendant-appellant on the morning of December 3rd, 1963, was illegal, and any statements made by him during the extended incommunicado detention following it were stained with the illegality of the arrest. The statements, whether oral or written, were illegal within the purview of Section 251 of the Code of Criminal Procedure.

C. The motion should have been granted because the evidence presented to the Grand Jury was insufficient as a matter of law.

It is apparent from an examination of the indictment (cf. Exhibit D, p. 113), and the bill of particulars (cf. Exhibit E, p. 114), that three individuals were allegedly present on November 28, 1963, at Pinewoods Road in the Town of Schaghticoke, Rensselaer County, N. Y., when Rose Mary Snay met her death. They were the deceased, the co-defendant, Edward F. LaBelle, and the defendant-appellant, Richard M. LaBelle. Since neither of the defendants testified before the Grand Jury, it was reasonable to assume when this motion was argued that that body heard no direct and/or eyewitness testimony against Richard M. LaBelle. It was also reasonable to assume that the indictment which was handed down against him was founded principally upon his ex-

3. The statements, both oral and written, were elicited at a time when defendant-appellant was being detained in violation of his constitutional right to due process, since he was being illegally deprived of his liberty on a jurisdictionally defective "John Doe" information and warrant of arrest. They were therefore involuntary and inadmissible as a matter of law.

This argument has been fully developed in Point B-2 of this brief.

4. The statements, both oral and written, were involuntary as a matter of law and inadmissible because of the usual and uncontradicted proof peculiar to this particular prosecution, that they were elicited after the State Police wilfully delayed arraigning defendant for a period of four hours subsequent to a request by the Assistant District Attorney that such arraignment be had.

Section 165 of the Code of Criminal Procedure provides that upon arrest the defendant "must in all cases be taken before the magistrate without unnecessary delay" Section 1944 of the Penal Law recites that "a public officer . . . having arrested any person upon a criminal charge, who wilfully delays to take such a person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor." For years these sections have been more honored in their breach than in their observance by law enforcement agencies.

The defendant-appellant readily concedes, that with the notable exception of Judge Fuld, whose views on the subject will be presently quoted, the Court of Appeals has not adopted the McNab-Mallory rule and up to the present time has uniformly ruled a statement and/or confession obtained during an extended period of pre-arraignment detention in violation of Section 165 of the Code of Crim-

To be argued by
Thomas J. O'Connor,
Troy, N. Y.

Time for Argument: One Hour.

Court of Appeals

State of New York.

Mo. No.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

RICHARD M. LABELLE,

Appellant.

Indictment No. C-1886.

Rensselaer County Clerk's Index No. 86788.

DEFENDANT-APPELLANT'S BRIEF.

THOMAS J. O'CONNOR,
Attorney for Defendant-Appellant,
1704 Fifth Avenue,
Troy, N. Y.

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- B. The statements, both oral and written, were the direct and proximate result of the lie detector test, and therefore involuntary and inadmissible as a matter of law.

This argument has been fully developed in Point VII-B-1 (*post*).

- C. The statements, both oral and written, were illegally wrung from the defendant-appellant at a time when he was being illegally detained after an illegal arrest on a jurisdictionally defective "John Doe" information and warrant of arrest. As the forbidden fruits of the illegal arrest they were clearly inadmissible.

This argument has been fully developed in Points VII-B-2 and VII-B-3 (*post*).

- D. The statements, both oral and written, were coercive and involuntary as a matter of law and therefore inadmissible, because of the usual and uncontradicted proof peculiar to this particular prosecution, that they were elicited after the State Police criminally delayed arraigning defendant for a period of four hours subsequent to a request by the Assistant District Attorney that such arraignment be had.

Section 165 of the Code of Criminal Procedure provides that upon arrest the defendant "must in all cases be taken before the magistrate without unnecessary delay." * * * Section 1844 of the Penal Law recites that "a public officer * * * having arrested any person upon a criminal charge, who wilfully delays to take such per-

nately testified that there was only a ten or fifteen minute interval between the completion of the test and the indication by the accused that he wished to make a statement (pp. 327-333, 1248). In his opinion there was a definite correlation between the lie detector test and LaBelle's oral and written statements (p. 310). And finally, Inspector Brandon, the ranking official at the time, testified that the appellant's "verbal statement came within five minutes" after the completion of the lie detector test (pp. 360, 1291).

Therefore, the mere presentation of the transcribed statement to the Grand Jury should have mandated a dismissal of the indictment by the Court in an independent exercise of its own inherent right and duty to protect LaBelle in his constitutional and statutory prerogatives. The legal stigmata of the lie detector test infected the resulting written statement with a permanent and continuing illegality, and tainted the entire Grand Jury proceeding. For that reason alone the Court below should have granted the motion because of the clear mandate of Section 251 of the Code of Criminal Procedure.

B.2. Evidence of any oral or written statement by the defendant-appellant during his extended period of illegal prearrest detention as a result of a sham arrest on a jurisdictionally defective "John Doe" assault information and warrant of arrest was illegal evidence. It tainted the entire Grand Jury proceeding.

The sham arrest of the defendant-appellant on December 3, 1963 on a jurisdictionally defective information and warrant of arrest charging him with Assault in the Third Degree against the person of someone other than the deceased and on complaint of Rensselaer County Detective Leo P. Barry infected his oral and written statements with a continuing and ineffable taint of illegality.

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Police arrests which are patently a pretext employed by law enforcement agencies to insure the incommunicado detention of individuals until a confession of a more serious crime can be wrung from the suspect, have been vigorously interdicted by the Court of Appeals:

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See also:

People vs. Robinson, 13 N. Y. 2d 296-301, 1963.

Richard M. LaBelle was arrested by Investigator Garrett and Senior Investigator Bardossi, at around 10:15 A. M. on the morning of December 3, 1963, on a "John Doe" warrant of arrest. The warrant of arrest accused "one John Doe, whose true name and identity is unknown" of assaulting one Mary Dolan in the City of Troy, N. Y., on November 28th, 1963, in violation of Section 244, of the Penal Law (Exhibit Volume, pp. 57-58). It had been issued by Hon. Joseph F. Daly, Police Court Justice of Troy, N. Y., at around 8:00 o'clock, P. M. on the preceding evening, after Rensselaer County Detective Leo P. Barry had sworn to an information before the Police Justice "upon information and belief" alleging that "John Doe, whose true name and identity is unknown" assaulted the aforesaid Mary Dolan in the City of Troy on the aforesaid November 28, 1963 (Exhibit Volume pp. 62-63). The sources of the information and the grounds for his belief were not set forth in the information, and understandably so, since Detective Barry, the informant, possessed no personal knowledge of the event (p. 1619), but was merely acting in accordance with telephonic instructions (pp. 1429, 1613) from New York State Police Lieutenant Inspector Brandon "to locate a Judge" and to "obtain some kind of warrant" (p. 429). At the time, Lieutenant Inspector Brandon telephoned Detective Barry from the Loudonville, N. Y. State Police Barracks on the evening of December

2, 1963, he informed him that the State Police had obtained a signed statement from Miss Dolan (Exhibit Volume pp. 59, 60 and 61) in which she stated that two men, one "very stocky with big arms," and the other "a blond headed fellow" had assaulted her on November 28, 1964. Barry further testified that the appellant was not a "blond headed fellow"; his hair was dark on December 3, 1964 (pp. 432-433). Neither Miss Dolan nor her signed statement were ever seen by the Police Justice at the time when he issued the warrant (pp. 430, 1270, 1272, 1618, 1626).

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People vs. Belcher, 302 N. Y. 529, 1951;
People vs. James, 4 N. Y. 482, 485, 1958;
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Since allegations on information and belief, unsupported by sworn depositions on knowledge, render an information jurisdictionally defective as hearsay (*People vs. Bresee*, 28 N. Y. Supp. 2d 539, 541), the arrest of the defendant-appellant on the morning of December 3rd, 1963, was illegal, and any statements made by him during the extended incommunicado detention following it were stained with the illegality of the arrest. The

statements, whether oral or written, were therefore illegal within the purview of Section 249 of the Code of Criminal Procedure.

B-3. Evidence of any oral or written statements by the defendant-appellant was illegal evidence as the outgrowth of a constitutionally inhibited seizure of his person on a jurisdictionally defective assault information and warrant of arrest, in violation of the Fourth and Fourteenth Amendments.

The defendant-appellant's pre-arraignment statements, both oral and written were indisputably the "fruit of the poisonous tree," nurtured in the soil of a statutorily inhibited period of pre-arraignment detention (Sec. 165, Code of Criminal Procedure), after having been originally planted in the soil of an unconstitutional and illegal arrest (Point B-2, *supra*). As the product of an unconstitutional arrest, they were a species of illegal evidence which should never have been presented to the Grand Jury in support of the indictment. The primary taint of the original illegal arrest was never dissipated or purged.

Wong Sun vs. United States, 371 U. S. 471;
Fahy vs. Connecticut, 375 U. S. 85.

Since the Fourth Amendment prohibiting illegal searches and seizures as construed under the "Wong Sun Doctrine," has been held to apply *in toto* to the States (*Ker vs. California*, 374 U. S. 23; *Collins vs. Beto*, 348 Fed. 2d 823, 826; *People vs. Haven*, 381 P. 2d 927; *People vs. Bilderback*, 401 P. 2d 921, 926, 927; *People vs. Robinson*, 13 N. Y. 2d 296-301, the Trial Court committed reversible constitutional error in upholding the Grand Jury's consideration of LaBelle's statements.

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

RICHARD M. LABELLE,
Defendant-Appellant.

Rensselaer County Clerk's Index #86788.

RECORD ON APPEAL.
Volume I—Pages 1 to 416.

THOMAS J. O'CONNOR,
*Public Defender, Rensselaer County, At-
torney for Defendant-Appellant,
251 River Street,
Troy, N. Y.*

CON G. CHOLAKIS,
*District Attorney, Rensselaer County,
Attorney for Respondent,
Court House,
Troy, N. Y.*

THE REPORTER COMPANY, INC., Walton, N. Y. 13856—607 865-4131—1970

(3087)

OFFICE OF THE
PUBLIC DEFENDER
RENSSELAER COUNTY
COURT HOUSE, TROY, N. Y.

**Notice of Motion for a Pre-New Trial and Determinative
Hearing and Stay of Trial.**

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF RENSSELAER.

THE PEOPLE OF THE STATE OF NEW YORK

against

RICHARD M. LaBelle,

Defendant.

Rensselaer County Index #36788

SIR:

Please Take Notice that upon the annexed affidavits of Thomas J. O'Connor and Richard M. LaBelle, each sworn to on the 21st day of March, 1967, and upon the remaining count of the indictment which was originally handed down herein by a Rensselaer County Grand Jury on December 30, 1963, and upon the Bill of Particulars and all of the proceedings heretofore had herein, including the appellate proceedings before the Court of Appeals which resulted in a written opinion of reversal dismissing the first count of the original indictment (Premeditated Murder) and directing a new trial on the Felony Murder count of the indictment, the undersigned will move this Court in behalf of the defendant, Richard M. LaBelle, at a Special Term thereof to be held in and for the County of Rensselaer on the 27th day of March, 1967 at 11:00 o'clock

*Notice of Motion for a Pre-New Trial and Determinative
Hearing and Stay of Trial*

in the forenoon of that day, or as soon thereafter as counsel can be heard:

- (1) for an order granting to the aforesaid defendant, Richard M. LaBelle, an independent, open, separate, pre-new trial and determinative hearing as to the voluntariness and/or admissibility of any statements and/or confessions, either oral or written, made by the aforesaid defendant, Richard M. LaBelle, in the early morning hours of the 4th day of December, 1963, at the New York State Police Sub-station, East Greenbush, Rensselaer County, N. Y. after an arrest and in the absence of counsel, either assigned or otherwise, and after a 17 hour period of in-custodial, pre-arraignment detention and interrogation;
- (2) for an order staying the defendant's trial until the requested determinative pre-trial hearing is had.

Dated: March 21st, 1967.

Yours, etc.

THOMAS J. O'CONNOR
Rensselaer County Public Defender
Assigned Counsel for Defendant,
Court House
Troy, New York.

To:

Hon. M. Andrew Dwyer, Jr.,
Rensselaer County District Attorney.

Affidavit of Thomas J. O'Connor in Support of Motion.

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF RENSSELAER.

THE PEOPLE OF THE STATE OF NEW YORK

against

RICHARD M. LABELLE,

Defendant.

Rensselaer County Index #36788

State of New York,
County of Rensselaer, ss:
City of Troy,

THOMAS J. O'CONNOR, being duly sworn, deposes and says:

1. I am the court-assigned attorney for Richard M. LaBelle, the defendant in the above-entitled prosecution, which is one in which he is awaiting a new trial upon the remaining count of an alleged two-count indictment charging him with the capital crime of Murder in the First Degree. I have read the annexed affidavit of the aforesaid defendant, Richard M. LaBelle, and respectfully incorporate herein all of the facts therein alleged with the same force and effect as if they were herein fully set forth.

Affidavit of Thomas J. O'Connor in Support of Motion

2. This affidavit is being submitted by me in support of a motion which I am about to make for an *Escobeda-Miranda* independent, open, separate, pre-new trial and determinative hearing as to the admissibility of any statements and/or confessions, either oral or written, made by the aforesaid defendant, Richard M. LaBelle, so that the aforesaid defendant may have the benefit of a pre-new trial determination as to the admissibility of a written statement and/or confession made by him in the early morning hours of December 4, 1963, at the New York State Police Sub-station, East Greenbush, N. Y., after a 17 hour period of pre-arraignment in-custodial detention.

/s/ THOMAS J. O'CONNOR

Sworn to before me this

21st day of March, 1967.

/s/ Helen C. Elicker

Commissioner of Deeds, Troy, N. Y.

My Com. expires 3/3/68

Affidavit of M. Andrew Dwyer, Jr., in Opposition to
Motion.

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF RENSSELAER.

THE PEOPLE OF THE STATE OF NEW YORK

against

RICHARD M. LABELLE,

Defendant.

Rensselaer County Index #36788

State of New York,
County of Rensselaer, ss:
City of Troy,

M. ANDREW DWYER, Jr., being duly sworn, deposes and
says:

1. Your deponent is the District Attorney of the
County of Rensselaer and, as such, is charged with the
duty of prosecuting the above entitled case.

2. This affidavit is made in answer to the affidavit of
Richard M. LaBelle, the above named defendant, in sup-
port of his motion for an order granting him a hearing
as to the voluntariness and/or admissibility of any state-
ments and/or confessions either oral or written made
by him on the 4th day of December, 1963 at the New
York State Police sub station, East Greenbush, Rens-
selaer County, New York.

3. The defendant sets forth, at length, arguments al-
legedly in support of his contention that he is entitled
to such a hearing.

*Affidavit of M. Andrew Dwyer, Jr. Opposition to
Motion*

4. The defendant sets forth upon the advise of counsel, in support of his contention, various portions of the prevailing opinion in the case of *Miranda vs. Arizona*, 384 U. S. 436. Your deponent unqualifiedly opposes the granting of any such hearing upon three grounds:

- (1) The case cited by the defendant is not in point or applicable to the instant case.
- (2) All of the arguments raised in the affidavit of the defendant have been reviewed in the County Court, in the Appellate Division and in the Court of Appeals and have all been resolved against the contentions of the defendant.
- (3) In a recent motion to Acting County Court Judge John J. Call the same issues were raised by counsel for the defendant and were rejected.

In view of the foregoing your deponent respectfully requests that the motion of the defendant be in all respects denied and for such other and further relief which to the Court may seem proper to and including the denial of any further stay of the trial for the defendant.

M. ANDREW DWYER, JR.

Sworn to before me this
23rd day of March, 1967.

RITA BRUNELLE

Commissioner of Deeds

Opinion of Justice McCall on Foregoing Motion.

COUNTY COURT, STATE OF NEW YORK,

RENSSELAER COUNTY.

PEOPLE OF THE STATE OF NEW YORK

against

RICHARD LABELLE.

Appearances:

M. Andrew Dwyer, District Attorney, Rensselaer County, County Court House, Troy, New York, attorney for people.

Thomas J. O'Connor, Esq., Public Defender, County Court House, Troy, New York, attorney for defendant.

McCALL, J.:

Defendant moves for a hearing as to the voluntariness of any statements or confessions made by defendant during the course of in custodial pre-arraignment interrogation. This defendant was convicted of first degree murder on two counts of an indictment alleging pre-meditated homicide with intent to kill and a felony murder. His conviction on the first count of pre-meditated homicide was set aside as not proved and his conviction on the felony murder was reversed and sent back for a new trial. The reason for the second reversal was that a certain statement of his, used against him on the trial, had been so redacted before its reception into evidence as to work prejudice against him. The new trial was directed as to the second count of the indictment only.

Opinion of Justice McCall on Foregoing Motion

An examination of the record of the case indicates that the defendant here had a pre-trial or so called Huntley hearing on the statement in question. The court found the statement voluntary and reserved to the defendant the right to present the claim of involuntariness to the jury. It is interesting to note that the court at the voluntariness hearing found that the safeguards against self-incrimination were observed. The case law on coerced confessions was followed. (*People v. Richard LaBelle*, 44 Misc. 2d 324). At the first trial, this defendant did not dispute the voluntariness of the statement, despite his right to do so. Apparently he may do so at his second trial. Be that as it may, on the appeal, both to the Appellate Division and the Court of Appeals, defendant specifically attacked the decision of the trial judge as to voluntariness, and the higher courts affirmed the ruling below. The case was sent back for a new trial and the defendant now claims such a new trial includes all new pre-trial proceedings. It is the judgment of the court that he seeks more than his due. The reversal put him in the same position he was before his trial began. As to those things that preceded the trial, they stand, in absence of direction from the appellate courts to the contrary. Hearings of the type herein involved are fairly new in the law and cases on the exact point are naturally few but the court finds justification for its ruling in *People v. Dunn*, 26 A. D. 2d 381. The conviction of the defendant therein was reversed because of improper, prejudicial conduct of the district attorney at the trial and in the new trial granted. The last two sentences of the opinion are enlightening (page 383): "Upon a new trial it will not be necessary to conduct another Huntley hearing concerning the statements that were received in evidence during the first trial. We agree with the findings of the trial judge

Opinion of Justice McCall on Foregoing Motion

after the former preliminary hearing". This court takes recognition of the fact that on final appeal, the previous decision as to voluntariness was affirmed and that therefore, there is no need for a new voluntariness hearing nor is the defendant entitled to one.

Defendant also indicates he wants a hearing as to the application of his case of the Miranda doctrine. His attorney calls for an Escobeda-Miranda hearing. This defendant previously moved this court, subsequent to the reversal of his conviction for an order granting him a hearing as to whether his pre-indictment statement violated his rights as outlined in *Miranda v. Arizona*, 384 U. S. 436. The previous motion was denied as will appear from the opinion of this court dated March 3, 1967 and upon the basis of which the court subsequently signed an order, now entered in Rensselaer County, denying the motion for such a hearing. The basic reason for denial was that the Miranda doctrine had no application to his case. Whatever recourse this defendant may have from that order, it certainly does not include a renewal of the motion before the very court that denied it.

Motion in all respects denied.

JOHN J. McCALL

Richard J. Smith, Jr., for People, Direct

By Mr. Cholakis:

Q. Mr. Smith, you have testified that the automobile was brought to a halt in front of the Cohoes Police Station; is that correct? A. Yes, sir.

Q. And at that time you say there were two men in the other car; is that also correct? A. Yes, sir.

Q. Prior to seeing the car stopped in front of the Police Station on November 28th, 1963, had you known either of the occupants of the other car? A. Yes, sir, I did.

Q. And which one did you know? A. Edward LaBelle.

Q. And was he in the automobile as you observed it in front of the Troy, excuse me, the Cohoes Police Station? A. Yes, sir, he was.

Q. And did you observe the other passenger in that vehicle? A. Yes, sir, I did.

Q. Do you see him here in this Courtroom? A. Yes, sir, I do.

Q. Will you point him out, please? A. Right there (indicating).

Mr. Cholakis: Let the record show that the witness has identified the defendant Richard M. LaBelle.

By Mr. Cholakis:

Q. I ask you which of the two men was driving the other automobile? A. Edward.

Q. And was Richard seated— A. (Interrupting) Seated on the passenger side of the front seat.

Q. I beg your pardon? A. The front seat, passenger side.

Q. Was anyone else seated in the vehicle when you observed it? A. No, sir.

Q. Just the two of them? A. Yes, sir.

Q. And at that time and place was there a conversation between yourself and the occupants of the other automobile? A. Yes, sir.

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

RICHARD M. LABELLE,
Defendant-Appellant.

Rensselaer County Clerk's Index #86788.

RECORD ON APPEAL.
Volume II—Pages 417 to End.

THOMAS J. O'CONNOR,
*Public Defender, Rensselaer County, At-
torney for Defendant-Appellant,
251 River Street,
Troy, N. Y.*

CON G. CHOLAKIS,
*District Attorney, Rensselaer County,
Attorney for Respondent,
Court House,
Troy, N. Y.*

THE REPORTER COMPANY, INC., Walton, N. Y. 13856—607 865-4181—1970

(3087)

OFFICE OF THE
PUBLIC DEFENDER
RENSSELAER COUNTY
COURT HOUSE, TROY, N. Y.

Arnold Louis Bardossi, for People, Direct

allowed him to proceed to read the statement to himself.

Q. And following—did there come a time when he completed reading the statement, sir? A. Yes.

Q. And following the completion of his reading the statement was it signed by him? A. Yes, it was.

Q. Was it signed in your presence? A. Yes, sir.

Q. And was this at a time when Senior Investigator Konkle came into the room to act as a Notary Public? A. Yes.

Q. And was all this done in your presence? A. Yes, it was.

Mr. Cholakis: (To the Reporter) Mark that please.

(People's Exhibit No. 57 received and marked for identification.)

By Mr. Cholakis:

Q. Captain Bardossi, I show you People's Exhibit No. 57 marked for identification and ask you to examine it? A. (Witness reviews the statement.)

Q. And I ask you, sir, if you recognize that? A. Yes, sir, I do.

Q. And what is it? A. That is the statement I took from Richard M. LaBelle.

Q. And I ask you, sir, if that is the statement that you took as you were questioning Richard LaBelle and as he was answering your questions? A. Yes, it is.

Q. And I ask you, sir, if the language contained in People's Exhibit 57 for identification is yours or Richard LaBelle's? A. It is that of Richard LaBelle.

Mr. Cholakis: I offer People's 57 in evidence, and may the record show, Your Honor, that I furnished a copy—a photocopy of People's 57 for identification to Mr. O'Connor, attorney for the defendant, last Saturday.

Arnold Louis Bardossi, for People, Direct

Mr. O'Connor: Your Honor, may I examine preliminarily prior to your ruling on the offer, or may I reserve my right to examine it part of my general cross examination?

The Court: If you desire to examine now, you may examine him.

Mr. O'Connor: I think I do, if Your Honor please.

The Court: Then you may proceed.

Mr. O'Connor: And this is, Your Honor, a preliminary examination with respect to the voluntariness of this witness?

The Court: I don't know what it is, Mr. O'Connor. You asked me if you could examine the witness prior to offering any objection as to its admission and I said you could. You may go ahead and examine him. What you are going to examine him on, I don't know.

Mr. O'Connor: Well, I don't want to belabor the point, Judge, but I want it expressly understood that I am expressly conducting a *voir dire* as to voluntariness and I am not cross examining this witness now.

The Court: To answer your question, Mr. O'Connor, anything you do now will not preclude you from doing anything later.

Mr. O'Connor: Yes, Your Honor.

Preliminary Examination by Mr. O'Connor:

Q. Mr. Bardossi—

The Court: (Interrupting) Except that any information that you find here or bring out, you are bound by it.

Mr. O'Connor: Yes.

The Court: All right.

Arnold Louis Bardossi, for People, Direct

By Mr. O'Connor:

Q. On the morning of December 3rd at around 8:00 o'clock of that morning, you were at the East Greenbush substation in the performance of your duty as a BCI Investigator; is that correct? A. That's correct.

The Court: Mr. O'Connor, this examination at this time is strictly limited to something related to the voluntariness of the statement.

Mr. O'Connor: Right.

The Court: Anything beyond that will have to be reserved for general cross examination.

Mr. O'Connor: Yes.

By Mr. O'Connor:

Q. Did you say, and I know you did, did you say at 3:00 o'clock in the afternoon of this day Richard LaBelle was at the East Greenbush substation— A. (Interrupting) Yes, sir.

Q. (Continuing) —between 3:00 and 3:30? A. Yes.

Q. Do you know what I mean by in-custodial detention? A. Yes, I believe I do.

Q. Had he been arrested by you prior to that time and was he in custody at 3:00 or 3:30? A. Yes, sir.

Q. In other words he was not free to leave or go, was he? A. No, sir.

Q. To go or not to go, he was not free, was he? A. No, sir.

Q. His liberty was being restrained; is that correct? A. That's correct.

Q. And is it true that during this half hour between 3:00 and 3:30 in your presence Major Brandon asked Richard if he would be willing to take what is commonly known as a lie detector test? A. Yes.

Q. And Major Brandon was at the time the ranking officer in charge of the investigation of the circum-

Arnold Louis Bardossi, for People, Direct

stances surrounding the death of Rosemary Snay on November 28, 1963, wasn't he? A. Yes, he was.

Q. To your knowledge, and it is true, that Richard agreed to take such a test? A. I beg your pardon?

Q. And it is true, is it not, that Richard agreed to take such a test— A. (Interrupting) Yes.

Q. (Continuing) —at the time of his being detained on what is known as a John Doe warrant? A. Was he being detained on a John Doe warrant? Yes, he was.

Q. And you were the arresting Officer? A. Yes, sir.

Q. Or in fairness you were one of the arresting officers; is that correct? A. Yes.

Q. Had he at the time been arraigned on that warrant? A. No, sir.

Q. The—do you know that Richard subsequently did take a lie detector test? A. Yes, sir.

Q. Which came first, the lie detector test or the written signed statement which Mr. Cholakis has offered? A. The lie detector test.

Q. How soon after the lie detector test did you begin to question Richard for information which led to your typing of the written statement?

Mr. Cholakis: I object to the question unless it is first established that this witness knows when the lie detector test was completed?

The Court: Sustained.

By Mr. O'Connor:

Q. Do you know of your own knowledge when the lie detector test was completed? A. No, sir, I do not.

Q. Have you ever given previous testimony concerning the sequence—the time sequence between the lie detector test and the interrogation by you with respect to the typing of the written statement? A. Yes, sir.

Mr. Cholakis: I object to the question as vague, Your Honor.

Arnold Louis Bardossi, for People, Direct

The Court: Well, I will let him answer if he can. Overruled.

The Witness: Yes, sir, I did.

By Mr. O'Connor:

Q. And it is true, is it not, that you were previously sworn under oath that the statement came—I am quoting, immediately after the lie detector test? A. Yes.

Mr. Cholakis: Just a minute. May we have the book and page?

Mr. O'Connor: Will you bear with me for a moment, Your Honor?

Mr. Cholakis: I will withdraw my objection, Judge. All right.

By Mr. O'Connor:

Q. Can you answer that question, sir? A. Yes, I believe I did.

Q. Did you, or didn't you? A. Yes, I did.

Q. Had you any knowledge at the time that you took the statement, when I say took the statement, I mean when you were questioning Richard and getting information which you then typed, do you understand that, do you? A. Yes.

Q. Had you any knowledge of the facts surrounding the issuance of a warrant upon which you had arrested Richard? A. Yes, I did.

Q. Had you any facts within your knowledge concerning the circumstances under which the warrant was issued?

Mr. Cholakis: I object to it as being irrelevant and immaterial, Your Honor, already gone through, and proven to other witnesses. This witness's knowledge or lack thereof is immaterial.

Arnold Louis Bardossi, for People, Direct

The Court: I will allow it. You may answer it if you can.

The Witness: Yes, I knew that the warrant had been issued by Judge Daly in Police Court, Troy.

By Mr. O'Connor:

Q. Well, you were not there in your capacity as a State Policeman or in any capacity at the time and place that the warrant was issued, were you? A. No, sir.

Q. And did you know on December 3rd, who swore to the Information about which that warrant was issued, I assume you now know, but I want to know if you knew on December the 3rd? A. I didn't know the name of the person; no.

Q. As an arresting officer on this particular day and as an officer in the process of taking a statement from the defendant, a written statement, in the manner in which you have indicated, were you then familiar with what I call the prompt arraignment statute? A. Yes, sir, I was.

Q. Would you—can you tell this jury in your own words, what your familiarity was with those statutes at this time? A. Yes.

Q. What they were, what they required? A. Required the prompt arraignment before the nearest available magistrate of a prisoner arrested on a criminal charge.

Q. And it is true, is it not, that to willfully delay such an arraignment under the provisions of the old Penal Law was a misdemeanor, didn't you? A. Yes, sir.

Q. And you knew this when you were typing the statement? A. Yes, sir.

Q. How many hours after you arrested Richard in Troy, did you commence to type the statement? A. Approximately 13, 12-13.

Arnold Louis Bardossi, for People, Direct

Q. And during that 13 hour period you, as the arresting officer, had not brought Richard before a magistrate for arraignment on this charge, had you? A. No, sir.

Q. Now did you put other things in this statement that Richard told you— A. (Interrupting) I believe I did.

Q. (Continuing) —relevant to the death of Rosemary Snay? A. Yes, sir, I believe I did.

Q. Did you see Mr. Cholakis during the time that you were typing this statement in the room where you were taking it? A. Yes, sir, I did.

Q. Now during—and was this while you were eliciting information from Richard for the purpose of typing the statement? A. Yes, sir.

Q. Did Mr. Cholakis participate in the interrogation at all, did he ask any questions of Richard? A. No, sir, not to my recollection.

Q. Well, if he had would you have recalled it? A. I believe I would.

Q. Now he unquestionably was in the room during the interview that led to the typing of the statement? A. For a matter of a very few minutes or not even minutes.

Q. That is not my question. He unquestionably was in there, wasn't he? A. Yes, sir, he was.

Q. And did he raise any questions or did he speak to you or to any other trooper in your presence in that room concerning the need for arraigning Richard? A. No, sir, he did not.

Q. Who else was in the room? A. Trooper Tom Winicke (phonetic).

Q. Did Trooper Winicke participate in the interrogation to any extent? A. Yes, to some degree. He was present throughout the time that I was taking the statement.

'rnold Louis Bardossi, for People, Direct

Q. Did you conduct the major portion of the interrogation? A. Yes, I would say I did practically all of it.

Q. Were you ever this day and prior to the time that you started to type the statement instructed to arraign Richard on the Assault, 3rd, charge? A. No, sir.

Q. Were you present at any time when Mr. McCarthy or Mr. Sackel was with Richard? A. No, sir, I don't believe that I was; I don't recall.

Q. If you had been would you have recalled it? A. I believe I would, yes.

Q. Did—prior to the taking of the statement, did you or did anyone in your presence advise Richard of his constitutional rights? A. Yes.

Q. When, immediately—when—at what point of time? A. Well, at the time that he was arrested.

Q. No, I am talking about immediately, excuse me for interrupting but I am confused, I mean immediately prior to the interrogation which led to the statement which I think was around 11:00 o'clock or 11:10, was it not? A. Around that time as I recall. I think either myself or Lieutenant Brandon repeated the same thing that I had advised him of earlier in the day.

Q. Who did that and at what time? A. Well, I don't recall exactly whether it was myself or Lieutenant Brandon but I remember it was done just prior to the statement being started.

Q. What was said, do you recall, either by you or Mr. Brandon? A. Well, as I stated before, that he was entitled to an attorney, that he did not have to give a statement and that any statement that he gave could be used against him and that was the gist of the instructions.

Q. Are you finished? A. Yes.

Q. Did the statement contain a typed statement as to all of the advice that you have just testified to? A. I can't recall right now but I am sure it is in there, the fact—

Arnold Louis Bardossi, for People, Direct

Q. (Interrupting) What? A. To the best of my recollection at the moment without seeing the statement I am sure it is in there that any statement he gave could be used against him.

Q. Are you saying that you are saying that any advice that you gave him concerning what you and I call, and we will accept as his constitutional rights, are in the statement? A. I believe at least in part they are, they may not be complete.

Q. Well, what is your recollection as to whether they are totally in there or not totally in there?

Mr. Cholakis: Your Honor, I am sorry but I object to this. The statement is the own best evidence of what is contained therein.

The Court: I would think what is in the statement—the statement speaks for itself.

Mr. O'Connor: Exception, Judge.

By Mr. O'Connor:

Q. In any event you did advise him that anything he said could be used against him; right? A. That's correct.

Q. Do you recall if you typed that in?

Mr. Cholakis: Object, Your Honor.

The Court: It is the same objection. Sustained.

Mr. O'Connor: Exception.

By Mr. O'Connor:

Q. It is a fact, is it not, within your personal knowledge that the arraignment of Richard LaBelle on the murder charge took place sometime after the statement?

A. Yes.

Q. What time did it take place? A. I would say approximately 4:00—sometime between 4:00 and 4:30 in the morning.

Arnold Louis Bardossi, for People, Direct

Q. We know that that took place, do we not, you and I, in the East Greenbush substation before Justice of the Peace Decker, is that a fair statement? A. Yes.

Q. Now how many hours intervened between the signing of the statement and the arraignment? A. How long a period of time?

Q. (Mr. O'Connor nods head affirmatively.) A. I think the most, a half hour.

Q. Were you present when Richard was arraigned? A. No, sir, I was not.

Q. Did you swear to the Information upon which he was arraigned? A. No, sir, I did not.

Mr. O'Connor: I object to the admission of the exhibit respectfully, Judge, on the ground it has not been shown to be a voluntary statement as a matter of law.

The Court: I will hear you on that, Mr. Cholakis.

Mr. Cholakis: We will state for the record, Your Honor, that the presumption of voluntariness is with the People and there is nothing to show—to rebut that presumption and, as a matter of fact, through the witness we have shown what led up to the taking of the statement and there is absolutely nothing in the record to show that it was anything but a voluntarily made statement.

The Court: You are objecting to the receipt of this on the ground that it is involuntary as a matter of law?

Mr. O'Connor: Yes, that is the grounds.

The Court: That is denied.

Mr. O'Connor: I respectfully except.

The Court: Has this been offered?

Mr. Cholakis: Yes, sir, it has.

The Court: It is received.

Reading of Statement of Richard M. LaBelle

Q. And I ask you if you meant it contained the full story or is it the full story as given to you by Richard LaBelle? A. The full story as given to me by Richard M. LaBelle.

Mr. Cholakis: Thank you. I have no further questions.

Re-cross Examination by Mr. O'Connor:

Q. Was Edward quite muscular too? A. I beg your pardon?

Q. Was Edward quite muscular too? A. Yes, he was.

Q. And he was 60 pounds heavier? A. Yes, approximately.

Mr. O'Connor: That's all.

Mr. Cholakis: Nothing further. Thank you, Captain.

(Witness excused.)

Mr. Cholakis: At this time, Your Honor, I would hand up a photocopy of People's 57 to the Court and I would request permission to read the statement to the jury.

The Court: You may.

Mr. Cholakis: "People's Exhibit 38 for identification. Statement of Richard Martin LaBelle. State of New York, County of Rensselaer, Town of East Greenbush. Richard Martin LaBelle being duly sworn deposes and says: 'I have been told that I need not make this statement and I have been advised of Constitutional Right against self-incrimination and I do say of my own free will and with the full knowledge that what I may say can be used against me in a criminal action.

'I am married and live with my wife at 133 First Street, Troy, New York, I am 23 years of age, I

Reading of Statement of Richard M. LaBelle

have no permanent job but I work for my brother on weekends and he has a garbage collection route. On Thanksgiving Day, November 28, 1963, I got up about 9:00 or 10:00 o'clock in the morning. I had breakfast and I sat around the house having breakfast with my brother Raymond, and his wife, Ruth, and we talked and then I took a shower and shaved. At about 11:30 a. m., my brother, Edward LaBelle, and his wife, Marsha, who live at 127 Second Avenue, Troy, New York, came to my house and it was during the time they first came that I took my shower and shaved. After I finished my shower my wife and I dressed and my brother, Eddie, his wife, my wife and I left my house. I was wearing a pair of dark blue suit pants, sneakers (dirty white), white short sleeve sport shirt with blue flecks, black leather 3/4 length car coat. When we left my house Eddie had his car, a 1954 Chevrolet, color dark grey, four door sedan, had New York Plates MT 9451, we all got in this car and we went to my sister, Lillian Bailey, who lives at 13 Federal Street, Troy, New York. We got to my sister's house about 12:00 noon and we went there to have Thanksgiving Dinner. At this time besides my wife and I and Eddie and his wife, Ruth, my sister, Lillian and her husband, Willard Bailey, and their three children. There was no one else at the house. The men had a few beers before dinner and before dinner Eddie and I went to Congress Street, Troy, New York, and I believe it was Hogan's Liquor Store near Hot Dog Charlie's. I went in and bought a fifth of Seagram's Seven Whiskey and then we went back to my sister's house. We had a couple of more beers then at about 2:30 or 3:00 p. m., we all sat down and had dinner. We finished eating about 4:00 p. m., and

Reading of Statement of Richard M. LaBelle

then we all sat down and had a few drinks and talked. Eddie drank most of the bottle of whiskey that we had bought. At about 6:30 p. m., or 7:00 p. m., Eddie and I and our wives left in Eddie's car, he drove and we drove to Eddie's house and dropped off our wives. We then drove north on River Street in Troy, New York, and after we had gone about a couple of blocks north of Eddie's house I told Eddie to stop the car and I was feeling sick and felt like I had to throw up. Eddie stopped the car, pulled over to the right curb, I got out of the passenger's side onto the sidewalk, I tried to vomit but nothing would come up and just about this time a girl whom I didn't know walked by but at this time I didn't pay any attention to her and after a few minutes of dry heaves, I felt better and got back in the car. After this Eddie drove north turned right at the next intersection and circled the block a couple of times. We, by the time we circled the second time and came out on River Street, we headed south. In between this time Eddie parked the car in an alley in this block we were circling there were some mens' pants and socks and T-shirts hanging on a line, Eddie and I got out of the car, we went over to the line and we took a couple of pair of socks, some T-shirts and a pair of pants and then we got back in the car and drove onto River Street and started south and we drove to the 112th Street Bridge, which goes over to Cohoes, New York, we turned right at 112th Street and started over the bridge towards Cohoes, New York, we saw my brother-in-law's car and Eddie speeded up and caught up to him, he beeped the horn and waved to him. My brother-in-law is Frank Ricatta, 143 Saratoga Avenue, Waterford, New York, he was driving his

Reading of Statement of Richard M. LaBelle

1954 Plymouth Sedan, four door, color—blue and white. We passed him and continued over the bridge and we went through an intersection with a red light and just before we got to a set of railroad tracks a car which I think was a Mercury, I can't remember the color, pulled up alongside of our car and we both stopped in the middle of the street. The fellow that was driving the car had his window on his side down and he yelled over to me, "You guy's tried to grab this girl." I think there was three guys and two girls in the car, none of us got out of our cars but Eddie said, "Fuck you" and took off up the street and this car continued to follow us, so Eddie kept right on going and we drove up the Cohoes Road and the other car finally stopped chasing us and we continued out the Cohoes Road and we drove to the home of a friend of Eddie's by the name of Bob Lepp. To get to his house you go past the bowling alley on the Cohoes Road up to the Ford dealer's garage at an intersection, then you turn right and then went on about a half a block to a fish fry place, which is closed and Bob lived in the house next door to this. Eddie parked the car and we both got out and went in Bob's house, he wasn't home but his father, Charlie Lepp was, Eddie talked to him and he told us that Bob had left about a half hour before. We stayed a few minutes and then we left—by this time it was about 8:15 to 8:30 p. m. We drove back out to the Cohoes Road and drove back towards Cohoes, New York, and when we got back in the city Eddie drove to Bob's girlfriend's house, which is in the Front Street area in Cohoes, New York. We pulled up to a two-story, red brick house and Eddie parked across the street from this house. At this time there was a young girl standing on

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the stoop of this house, which I think had a Number 10 on it. Eddie and I got out of the car and we walked over to the stoop where this girl was standing and we got to her I said, "Hello" and Eddie started to talk to her but I didn't hear what he said to her. I stayed on the sidewalk in front of the house and Eddie went upstairs to where Bob's girlfriend lived. I stayed on the sidewalk and watched some kids that were playing hide-and-go seek. Eddie was upstairs only a couple of minutes then he came out. Eddie made some remark to the girl about her squealing on him or something like that. I don't remember if she said anything at this time but Eddie and I went back and got in the car at this time, the girl on the stoop started walking down the street in the direction that if you followed it out would take you to Guptill's Skating Arena in Latham, New York. At this time, we had our car parked facing in the opposite direction from the way this girl was walking and to the best I can remember it was about 9:00 p. m. The girl continued walking and Eddie drove a short ways down the street in the opposite direction and then he turned the car around and drove in the same direction the girl was walking. While we were turning around Eddie said he was going to drive up to this girl and ask her if she wanted a ride up to Guptill's arena. So when we got up even to the girl Eddie stopped the car, he rolled down the window and asked the girl if she wanted a ride up to the arena, at first the girl said, "No", so Eddie took off but at this time the girl had walked over a small rise in the street and to the best of my recollection she was out of sight at this time. Eddie started up the hill and we both could then see the girl walking up the hill. Eddie

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drove up the hill, past the girl and then at the top of the hill he turned around—while we were going up the hill the tailpipe on the car starting dragging on the road so we both got out of the car and we went into the trunk and Eddie found some wire in the trunk and we wired up the tailpipe so it wouldn't drag. Then we continued up the hill, turned around at the top, and started down again, when we were going down Eddie said to me that he was going to take the girl up to Guptill's and I said, "Why don't you leave her alone" and he said to me, "I am going to take her for a ride", then he told me that when we got to where the girl was I was to get out of the car with him. When the car got up to where the girl was Eddie pulled the car over to the curb on the same side as she was walking and parked and we both got out at this time—the girl was about five feet away from us walking toward us. When she got close to us Eddie asked her if she wanted a ride up to Guptill's and at this time she said, "Yes", and walked over to the car with us, Eddie got in behind the wheel on the driver's side then the girl got in the passenger's side and sat in the middle of the front seat next to Eddie and I got in and sat next to her—by this time I figure it was about 9:30 p. m. Then Eddie started up the car, pulled away from the curb and started down the hill, when he did this the girl said, "Where are you taking me, this ain't the way to Guptill's", Eddie said, "Shut up, I'm taking you for a ride", at this time the girl didn't say anything. Eddie then drove down towards the river and then Eddie parked the car near a wire fence near some factory buildings. After he parked the car Eddie said, "I am going to get even for you squealing" by this time he had told her to get in the back seat

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and she had and he had also gone into the back seat. I heard him say, "Take your clothes off" and I heard the girl say, "No" then I saw Eddie rip some of her clothes off, then the girl took the rest of her clothes off that hadn't been ripped off then I saw Eddie take all his clothes off, at this time I could hear the girl telling Eddie to leave me alone and then I could hear Eddie say, "I am going to screw you." I could hear him and the girl in the back seat and I am sure that he then laid her. From the time we parked about ten minutes went by. I saw Eddie get dressed, then he got out the back door on the driver's side and got back in the driver's seat. The girl at this time stayed in the back seat and got dressed and at this time she didn't say anything. Eddie at this time was trying to get the car started but it wouldn't start so Eddie told me to get out and push it, so I got out and pushed the car for about three or four feet then Eddie told me to get in the car and to make sure that the girl didn't get out. So I got back in the car on the passenger's side, then Eddie got out opened the hood of the car and banged on something, then he closed the hood and got back in the car and at this time it started up. At this time the girl was laying down on the back seat—when the car started Eddie told the girl to lay on the floor of the back seat and the girl did what Eddie told her and Eddie told me to get in the back seat and see that she stayed there. So I crawled over the front seat and got in the back seat, I sat over to the right, the passenger's side, and she stayed on the floor over on the right driver's side. Eddie then drove out to the highway and made a right turn, drove a little ways and at this time I asked him where he was going and he said to Melrose,

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New York, and I asked him what for and Eddie said, "I'm going to leave her up there she deserves it". I told him, "Why don't you leave her here and let her go home." At this time Eddie said, "I'm going to do what I want to do you just be quiet and don't get nervous". The girl was still on the floor and Eddie told her to get up and get in the front seat with him. The girl got up off the floor and at this time she was dressed and she climbed over into the front and sat right next to Eddie. At this time after she got into the front seat she turned her face towards me and there was blood on the front of her face and it looked like it was coming from her nose. I asked Eddie what he had done and he said, "Don't worry about it, it didn't hurt her." Eddie then continued to drive in the same direction—he made some turns on some streets that I don't know the name of and then we came to a broad street—he turned left and we drove over the Waterford Bridge and drove over through the Village of Waterford, down the main street and then across the Bridge by J. M. Fields Store and Freihofer's Bakery and then we turned right and then left at a Texaco Gas Station, went up a slight rise, then we left up Oil Mill Hill—we went up the hill to Miami Beach then we made a left turn and went up the main road towards Speigletown and Melrose, New York. We drove straight to Melrose, New York, at this time I was laying down in the back seat. I could hear Eddie and the girl talking but I couldn't hear what they were saying. When we got to Melrose, New York, we went straight through Melrose, went under the railroad overpass and then we turned left on the first road past the overpass going north. We drove about a little more than a half a mile down the road

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and about a quarter of a mile off the main road we crossed over a culvert and we came to a fork in the road, we turned right and went up a small grade in the road for a short distance until we came to an old bus which belongs to my uncle, Charles Palmer, who I think lives in Maplewood, New York. When we got to this bus on the right-hand side of the bus about five feet from the shoulder of the road, Eddie pulled just a little ways past the bus and then back around off the road alongside of the front of the bus which faces south. At this time Eddie stopped the car and turned off the ignition and at this time I asked Eddie what he was going to do here. Eddie said, "I'm going to have some more fun with her and then I'm going to leave her here." At this time the girl said, "Eddie please take me home." At this time I was still in the back seat and the girl was in the front seat with Eddie. Eddie then told me to get in the front seat and he told the girl to get in the back seat. I got out of the right rear door and got in the front seat on the passenger's side. The girl then climbed over the front seat and got in the back. Then Eddie told the girl to get undressed and he then got out on the driver's side and got in the back seat. At this time I figure it was about 10:00 p. m., or shortly after. When Eddie got in the back seat he took all his clothes off and I think he laid her again and this time he was in the back seat for about 20 minutes. Then after this Eddie told the girl to get dressed and he got dressed himself, then he told the girl to get out of the car and at this time I asked him what he was going to do and he said, "I'm going to leave her here." I said, "What do you want to do that for", he said, "Because she knows me", the girl got

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out the rear door on the passenger's side and Eddie got out on the driver's side and walked around the front of the car and at this time the lights of the car were out as he had turned them off when we pulled in. It was dark out but I was able to see Eddie walk around the front of the car and the girl was standing between the bus and the car near the right rear door on the passenger's side. Eddie came around to where she was standing. At this time Eddie had his back to me and was about two feet to the right of the car and the girl was about the same distance away from the car but I could not see which way she was facing. At this time I saw Eddie lift his right arm up over his head and I could see he had something in his right hand but I didn't know what it was he was holding at this time. Then I saw Eddie hit the girl in the head with whatever it was he had in his right hand. I saw the girl fall and I yelled, "Eddie" and he said, "Shut your Goddam mouth" and at this time the girl was laying on the ground and the best I could make out her head was pointed towards the front of the bus. I then saw Eddie still with something in his right hand in a bent over position and he kept hitting her—at this time I was yelling at Eddie and Eddie told me to, "Shut my Goddam mouth if I knew what was good for me." At this time I was afraid for my own life and this is why I did what he told me to do. Then I saw Eddie bend over, pick the girl up, open the passenger side back door. He slid her in feet first and she laid in the back of the car with her feet pointed towards the driver's side and her head resting near the center-post of the car on the passenger's side. Eddie then shut the door and walked around the front of the car, opened the front door on the driver's side and

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I saw him throw a claw hammer on the floor of the car in the front about at the center hump. Then he got in, I told him he was an idiot and then Eddie said, "If you say anything you know what I'll do to you." I didn't say anything and he said, "You better make sure because you know I'll get you." Then he got in and started the car and pulled back onto the road, when the car was on the road he stopped the car and told me to get and go back with him. We both got out of the car and walked back to where the girl had been laying on the ground and he told me that there was blood here and said throw dirt on it. The spot where the blood was was a short distance in front of the bus and there was two puddles and he picked up dirt with his hands and I did too and we each covered one of the puddles of blood with this dirt. When we finished this we both went back and got in the car and Eddie drove and we drove back towards Melrose, he drove to where a culvert in the road allows a small creek to run through and Eddie stopped the car on the right side of the road near the wall of the culvert on that side. Then Eddie got out, ran around the back of the car, opened the rear door on the passenger's side, pulled the body of the girl out and I saw Eddie take the body of the girl and throw it over the wall of the culvert and I heard the splash of water when her body hit the creek. Then Eddie said for me to come here to him and I thought he was going to hit me and he said, "Don't worry, I'm not going to hit you." Then he went to the right of the culvert and I did too and we walked down the bank to the water's edge and Eddie pushed the body into the culvert a short distance and then we both went back to the car and Eddie gave me a rag and told me to wipe the

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blood off the right back door on the panel and the floor and the sill of the door. I did this and then we both got in the car and Eddie drove out to the main road, turned right and went back towards Troy, New York, when we got to Oil Mill Hill he drove over Oakwood Avenue and at this time I was in a state of shock and I can't remember how we traveled and the next thing I knew was that Eddie was shaking me and the car was parked in front of Bob's girlfriend's house. Eddie told me to get out and to act normal and that we would be going home in a little while—at this time I figure it was just about 11:00 p. m., or shortly after. Eddie and I then went upstairs to the second floor and when we got in the apartment Bob Lepp, his girlfriend and her mother and father were home. I had a glass of wine to calm my nerves and Bob asked Eddie if he could use the car and Eddie said, "Okay." Then Bob and his girlfriend, Eddie and I went out to where the car was parked and Bob and his girlfriend got in Eddie's car and drove away. Eddie and I got on Bob's black and white motorcycle and first we went out the Mechanicville Road and then we went to the Victory Lunch in Troy, New York, we went in had a cup of coffee, then we went to Bob's house in Latham, New York. A few minutes after we got there Bob pulled in with the car. Then Eddie and I and Bob got in the car and we drove around Cohoes and Waterford area and then we dropped Bob off back at his house and Eddie drove back to his house and we picked up my wife and Eddie drove us home and dropped us off.

'On Monday, December 2, 1963, I read one of the Troy Newspapers and at this time I learned that the name of the girl that Eddie had killed and

Reading of Statement of Richard M. LaBelle

thrown in the creek was Rosemary Snay and that she came from Cohoes, New York.

'I have read the above statement and I swear it is the truth to the best of my recollection and knowledge. I understand what it means to swear to a statement, I understand the nature of an oath and realize that swearing to a false statement would make me guilty of a crime. Richard Martin LaBelle.

'Sworn to before me this 4th day of December, 1963, Lee J. Konkle, Lee J. Konkle, Notary Public, State of New York, Columbia County, Commission expires March 30, 1965.

'Witnessed by: A. L. Bardossi, T. S. Winnicki.'"

Your Honor, with the reading of the statement the People rest.

The Court: Mr. O'Connor?

Mr. O'Connor: Your Honor, I respectfully request in view of the fact that it is now eight or nine minutes after 4:00 a reasonable opportunity to prepare certain motions which I desire to make before Your Honor in the absence of the jury, and I do request that this case be adjourned until tomorrow morning at 10:00 o'clock in order to give me an opportunity to prepare.

The Court: Well, you shall have that opportunity, Mr. O'Connor. You will be prepared to make those motions at 10:00 o'clock tomorrow morning?

Mr. O'Connor: I will, Your Honor.

The Court: The motions are such a character that you want to make them in the absence of the jury?

Mr. O'Connor: Oh, yes.

The Court: Well, ladies and gentlemen, I am going to excuse now now until 10:45 tomorrow

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Mr. O'Connor: It was.

The Court: It is now in all respects denied.

Mr. O'Connor: Your Honor, I now respectfully move for a directed verdict of acquittal and for a dismissal of the indictment upon the ground the People have failed to establish the defendant's guilt beyond a reasonable doubt. In so moving I respectfully urge that there has been no evidence adduced at this trial, direct or circumstantial that the defendant Richard M. LaBelle conspired or planned or was even aware of Edward LaBelle's intention to perpetrate a rape upon Rosemary Snay. I respectfully urge that the proof adduced in the People's case establishes that Rosemary was first ravished and later disposed of and killed by Edward LaBelle. There was no proof, I submit, Your Honor, in the People's case which would sustain a finding that Richard shared his brother's specific criminal intent, and by specific, Judge, I mean specifically the intent to ravish and rape the girl. I respectfully call to Your Honor's attention that supposition or suspicion is a luxury which within the circumstances here neither the Court or Jury may indulge and that only supposition or suspicion can fill this evidential void in the People's case. It is my position on this motion, Judge, that the evidence does not show beyond a reasonable doubt, and, of course, that is the People's burden that the killing occurred while the felony of rape was being attempted or committed; on the contrary the People's proof, and it is established only in furthering the defendant's statement that the killing occurred after the consummation—after the total completion of the rape. In my judgment I say this respectfully as Your Honor must know, this by definition precludes as a matter

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of law, as a matter of law I respectfully submit, Your Honor, any conviction of the defendant for the crime of felony murder. In support with Your Honor's permission, I would like to cite several case authorities for the record in support of my argument. May I do so?

The Court: Certainly.

Mr. O'Connor: In support of my position, Your Honor, I respectfully cite *People vs. Elling*, 289 New York 419; *People vs. Ryan*, 263 New York 298 at page 302; *People vs. Smith*, 232 New York 239 at page 243; *People vs. Walsh*, 262 New York 140 at page 148; *People vs. Jackson*, 20 New York 2nd 440 at page 454, and I do call Your Honor's attention that that case was already cited in the trial brief I submitted, and *People vs. Marwig*, 227 New York 382 at 389 and 391.

It is therefore my argument, if Your Honor please, that since Richard's oral and written statements are demonstrably the poisoned fruit of a constitutional impermissible and illegal seizure of his person in violation of his first amendment rights, that there is actually lacking in the People's case any competent admissible evidence that the defendant was even present in the Schaghticoke area when Rosemary was killed. It is my further position, and I additionally urge it, that since his oral and written admissions were the direct and proximate result of a lie-detector test in connection with that assertion I respectfully call to Your Honor's attention that Mr. Bardossi stated that the statements came "immediately after the end of the lie-detector test", that the statements, of course, are legally inadmissible here in this trial, and if they are, as I contend, inadmissible by reason of my last two-pronged argument

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then of course, Your Honor, there is no proof that Richard ever even saw Rosemary on the evening of November 28, 1963, let alone feloniously participating in this homicide. Thank you.

Mr. Cholakis: May it please the Court, since the Court has already ruled on the first three or four motions of necessity my argument will be confined to the final motion made by Mr. O'Connor, and I would like to take the end of his argument first. He says that the statement is not legally admissible because it was a result of an illegal detention and as a result of a lie-detector test. I submit, Your Honor, this has already been decided by a pre-trial motion and a pre-trial decision of the Honorable Justice Chandler Knight. It is now a question of fact for the Jury to determine. I also respectfully point out to the Court that each of these allocations made by Mr. O'Connor, one that the statement is illegal because it was a result of a detention—so-called illegal detention and the result of a lie-detector test, each of these allocations were raised in the appellate court and my recollection is that the appellate court did not see fit to comment upon those.

I submit, Your Honor, that we have direct fruit as to the state of mind of Richard LaBelle, and that he did know what was in the mind of Edward LaBelle, and I submit that that was brought out in the courtroom yesterday in the testimony of Mary Catherine Combs, that there was a plan or scheme in which this man actively participated. I further submit, Your Honor, from the statement of the defendant, himself, giving him the benefit of everything contained in that statement, there is active participation on at least two occasions in the City of Cohoes when this man actively pre-

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vented or put himself in a position to actively prevent the escape of Rosemary Snay after she got into the car and I submit, Your Honor, that there is enough circumstantial evidence for this Jury that Richard LaBelle actively participated not only in the rape, but in the killing. I respectfully request that the motion of the defense in all respects be denied.

The Court: The motion is denied.

Mr. O'Connor: I respectfully except to your denial of my last motion.

The Court: Wait for the Jury?

Mr. Cholakis: We have 20 minutes, Your Honor.

The Court: This Court will stand in recess until the Jury arrives.

Court Officer: The Court will stand in recess until the Jury arrives.

10:27 A.M.

Recess

10:53 A.M.

After Recess

(The Jury returned to the Box at 10:53 A.M.)

The Clerk: Your Honor, we continue the Case of the People of the State of New York against Richard M. LaBelle, Indictment C-1886. The defendant is present with his attorney, the District Attorney is present, and there are 16 jurors in the Box. I will call the roll, Your Honor.

(The Clerk called the roll of jurors.)

Motions

are going to make motions and, perhaps argue those motions on questions of law which are of no concern to you and, therefore, you are not to hear them. There being no need for your services further today, there will be tomorrow, and the starting hour tomorrow will be 1:00 o'clock. Now, I am about to excuse you until that time. All along I have told you that you should not consider this case until it is finally submitted to you for judgment. Now don't get the impression that because the People and the Defendant have respectively concluded their proof and it has been submitted to you for final judgment because it has not been and, therefore, you will consider or continue to refrain from forming any judgment in this case until it is finally submitted to you for judgment. When that moment arrives you will be made aware of the existing of that moment by the Court. In line with this, again you are not to discuss it among yourselves, with others at any time, any place or anywhere. As I have often told you before during the course of the trial, you heard this case here, leave it here. With that admonition you are now excused until 1:00 o'clock tomorrow afternoon.

Court Officer: The jury returns to the juryroom at 1:00 o'clock tomorrow afternoon.

(The Jury left the Box at 2:43 P. M.)

The Court: All right Mr. O'Connor.

Mr. O'Connor: If Your Honor please, I respectfully move first of all for a directed verdict of acquittal?

The Court: Denied.

Mr. O'Connor: Exception. And, if Your Honor please, I respectfully renew each and every motion which I saw fit to make on behalf of the defendant at the end of the People's Case?

The Court: As renewed they are denied.

Mr. O'Connor: Exception. That's all.

Charge

kill. Oral statements and a written statement of the defendant made out of court have been introduced into evidence here. Before you can consider these as furnishing evidence either for or against the defendant you must find beyond a reasonable doubt they were voluntarily made. Let me say this in fairness, that there was no confession here in the legal sense. A confession is a direct statement of a man charged with a crime that he, in fact, committed that crime. Richard LaBelle has not confessed to this crime and by his plea of not guilty he says to you that he has not confessed. His statements, however, included admissions of what he did do and what he did say and from his statements you may find that he did do and did say these things, and so admitted and accepted these things become part of his conduct that you can examine to determine his guilt or innocence in accordance with the crime charged. In deciding whether these statements are voluntary you may consider all of the conditions and circumstances under which they were made.

The law of this State requires that a defendant arrested for a crime must be taken before a magistrate without unnecessary delay; that an officer who arrests a person and wilfully and wrongfully delays in taking such person before said magistrate is guilty of a misdemeanor. I charge you that the delay in the arraignment that appear here was unnecessary as a matter of law and was a violation as a matter of law. I also charge you as a matter of law that this defendant was arrested on a warrant issued without compliance under the law and that the detention under the arrest was illegal. However, the fact that a statement or statements was made during this illegal detention or unlawful delay do not in and of themselves make the statement involuntary but are merely factors you may consider in the determining its involuntariness or its voluntariness and you may consider this factor in connection with all other factors.

Time of argument:
40 minutes.

*To be argued by
Peter D. Fitzgerald.*

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK

against

RICHARD M. LABELLE,
Defendant-Appellant.

BRIEF OF APPELLANT.

PETER D. FITZGERALD,
Attorney for Defendant-Appellant,
55 Elm Street,
Glens Falls, N. Y. 12801

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This appellant seeks this court to remedy the confusion in *Miranda's* wake as manifested by the inconsistent result in *Johnson v. New Jersey* and *Jenkins v. Delaware* by ruling that Richard LaBelle is entitled to protections of *Miranda* in his post-*Miranda* retrial.

The Supreme Court of the United States has stated that it is left to the states what will apply to a retrial, the New York Code of Criminal Procedure states a retrial shall proceed as though no trial had been had, and thus the *Miranda* protection may and ought be afforded this appellant.

POINT VII.

The prearraignment oral and written statements were inadmissible, without reference to voluntariness.

The essential purpose of the police activity was to apprehend the defendant-appellant and bring him into custody in order to interrogate him as to a killing which was separate and distinct from the Assault Third warrant.

The sources of information and the grounds for belief were not set forth in the information. Detective Barry, the informant, possessed no personal knowledge of this event (p. 507) but was merely acting in accordance with telephonic instructions from New York State Police Lieutenant Brandon "to locate a Judge" and "to obtain some kind of warrant."

The original warrant was not on a proper information (pp. 314-316, 505-510) and the warrant was ruled defective and the arrest illegal as a matter of law (p. 757).

The said Mary Dolan, upon whose complaint the "John Doe" warrant was issued, never appeared before any magistrate (p. 430).

Yet this jurisdictionally defective information was used to obtain a warrant for arrest, which information was allegedly based upon information and belief, without a statement therein on the sources of the information and the grounds for the belief (*People v. Bertram*, 302 N. Y. 526).

The statement was made by defendant during the extended incommunicado detention. It followed the illegal arrest and therefore the statement was tainted with illegality of the arrest and was not admissible. The court should have suppressed defendant's statement and to so deny defendant's motion substantially prejudiced him in the defense of the action.

The Assault Third warrant was held by the court to be issued without compliance under law and that the detention of the arrest was illegal (p. 757). The court also held that the delay in arraignment was unnecessary as a matter of law (p. 757). The statement should be excluded without reference to its voluntariness. *Elkins v. United States*, 364 U. S. 206; *Mapp v. Ohio*, 367 U. S. 643.

See also the American Law Institute Model Code of Prearrest Procedure (tentative draft number 11966) Section 3.01 and Section 9.02, wherein the investigative arrest is rejected, and, where law enforcement agents acted without a warrant and without reasonable cause, no statement by such person shall be admitted against him in a subsequent criminal proceeding. Here the warrant was void and no probable cause existed.

The Court of Appeals has not accepted such conduct stating that the court should not tolerate such flagrant abuse of criminal process by police. *People v. Weinstein*, 11 N. Y. 2d 1098, dissent by Judge Fuld. Admissions under these conditions should be excluded. *People v. Davis*, 13 N. Y. 2d 690; *People v. Robinson*, 13 N. Y. 2d 296.

It certainly cannot be said that the failure to arraign Richard LaBelle on the charge upon which he was arrested was a mere oversight. It does not take much perception to conclude that this defendant was arrested for assault but interrogated for murder. The arrest was to insure an incommunicado detention of the individual until a statement of the crime they were actually investigating and interrogating could be wrung from the suspect. The police had no authority to have this defendant-appellant in custody for one hour, let alone 17.

After improperly having him in detention they then proceeded to trap, trick and induce the defendant to making a statement under which conditions it was purely involuntary. *Spano v. New York*, 360 U. S. 315.

Under the facts of this case the conclusion is inescapable that the warrant was a nullity, the arrest was investigative, and the statement should have been excluded. Without the statement the prosecution would not have established a *prima facie* case.

POINT VIII.

The prearrest oral and written statements of the defendant were involuntary as a matter of law.

The record of trial shows that defendant-appellant was arrested at his home at approximately 10:20 A. M.,

Time of argument:
40 minutes.

*To be argued by
Pierce H. Russell,
Assistant District Attorney.*

New York Supreme Court

Appellate Division—Third Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

RICHARD M. LABELLE,
Defendant-Appellant.

BRIEF OF RESPONDENT.

CON G. CHOLAKIS,
*District Attorney, Rensselaer County,
Attorney for Respondent,
Court House,
Troy, N. Y. 12180*

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Sections 464 and 544 of the Code of Criminal Procedure, and based upon *Johnson v. New Jersey*, 384 U. S. 709.

Appellant's argument is without merit since the issue presented was settled completely by *People v. Sayers*, 22 N. Y. 2d 571, cert. denied 395 U. S. 970. In *Sayers*, the issue was whether the admissibility of that defendant's confession must be determined by the standards set forth in *Miranda* merely because of the fortuitous circumstance that an error of law, *unrelated to the admissibility of his confession*, took place at his trial, which required a reversal of the conviction and a new trial (*ibid.*, at 575, italics added). That is precisely the issue in this point of the instant appeal. In *Sayers*, the Court of Appeals held against all arguments presented by appellant herein, and refused to retroactively apply the *Miranda* rules to post-*Miranda* second trials. *Sayers* is determinative of this point in all respects. The United States impliedly expressed its approval of the *Sayers* holding by refusing to grant certiorari.

POINT VII.

The prearrest oral and written statements were admissible.

Appellant argues that the original warrant for his arrest for assault on Mary Dolan was not based on a proper information and that the arrest was therefore illegal, that his statement was made during extended incommunicado detention, that the statement was tainted with the illegality of the arrest and was not admissible.

By a long and uninterrupted line of decisions in this State it has been made indisputably plain that a confes-

sion is not vitiated solely because it has been procured during a delay in arraignment or unlawful detention. *Balbo v. People*, 80 N. Y. 484, 499; *People v. Trybus*, 219 N. Y. 18, 22-23; *People v. Doran*, 246 N. Y. 409, 423; *People v. Mummiani*, 258 N. Y. 394, 399-400; *People v. Alex*, 265 N. Y. 192, 194-195. By statute a confession is admissible unless involuntarily made under the influence of fear produced by threats or under a promise of immunity by the District Attorney. Though it constitute a crime for which the responsible parties should be punished the unlawful detention is treated as no more than one element in the broader question of the voluntariness of the confession. It has significance only insofar as it lends to the establishment of the statutory grounds for exclusion. *People v. Spano*, 4 N. Y. 2d 256; *Spano v. N. Y.*, 360 U. S. 315; *People v. Weinstein*, 11 N. Y. 2d 1098.

In addition this point has been previously before the appellate courts in the instant case, has been decided in favor of the respondent and is now academic. *People v. LaBelle*, 44 Misc. 2d 327; *People v. Edward LaBelle*, 16 N. Y. 2d 807; *People v. Richard LaBelle*, 24 A. D. 2d 350; *People v. Richard LaBelle*, 18 N. Y. 2d 405.

In *Spano v. New York*, 360 U. S. 315, the United States Supreme Court reversed the Court of Appeals by reason of the fact that a confession had been extracted from the defendant (1) after he had been indicted for murder in the first degree; (2) after his attorney had surrendered him to the police under instructions not to answer any questions; (3) after he had asked for his attorney several times during the interrogation and was refused, and (4) after he had been tricked by a police officer whom he thought was a friend. These factors are not present in the case at bar.